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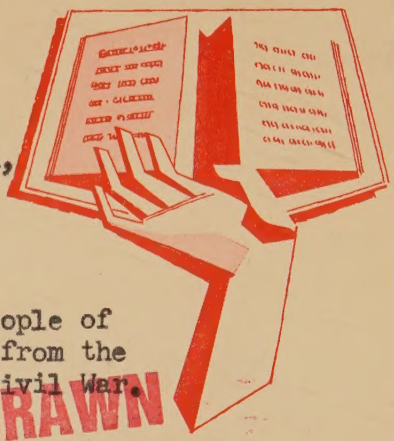

A History of the People of the United States, from the Revolution to the Civil War.

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A HISTORY

OF THE

PEOPLE OF THE UNITED STATES,

FROM THE REVOLUTION TO THE CIVIL WAR.

BY

JOHN BACH McMASTER,

UNIVERSITY OF PENNSYLVANIA.

IN SEVEN VOLUMES.

VOLUME III.

1803-1812.

NEW YORK AND LONDON

D. APPLETON AND COMPANY

1912

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BY JOHN BACH McMASTER.

Printed in the United States of America

To the Memory of

my Mother.

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HISTORY

OF THE

PEOPLE OF THE UNITED STATES.

CHAPTER XIV.

THE GOVERNMENT AND BOUNDARY OF LOUISIANA.

While the Federal writers were counting up the wagon-loads of dollars Louisiana would cost, and laughing at the salt mountain the province was said to contain, the President was laboring hard to persuade his friends to make the purchase constitutional. He had come into power solemnly pledged to construe the Constitution strictly. Just what he meant by strict construction could not be doubted, for he had, in a document written by himself, laid down the principle clearly. Briefly stated, it was this: Congress has two kinds of powers and no others; powers expressly delegated, and powers absolutely necessary to put such as are expressly delegated into effect. To this principle Jefferson was still true. Change in place had brought to him no change of view. Power to buy foreign soil and incorporate foreign nations into the Union was not expressly given to Congress. Nor was it necessary in order to put any delegated power into effect. In signing the treaty he had, therefore, in his own words, "done an act beyond the Constitution." * To make this act legal, the Constitution must be amended, and the needed amendment he now drew up and sent to his Cabinet.† Beginning with the declaration that Louisiana was incorporated with the United States and made a part thereof, it confirmed to the Indians the right

* Jefferson to Breckenridge, August 12, 1803. Jefferson's Works, vol. iv, p. 198.

† Jefferson Manuscripts.

to live on the soil and to govern themselves, and cut the territory in two parts by a line along the parallel of thirty-two degrees north latitude. From all that splendid region north of this line and west of the Mississippi the white man was to be shut out till a new amendment gave him leave to enter. The region south of thirty-two degrees was to be provided with a territorial government.

These were not the views of the Cabinet. Madison declaiming against the charter of the Bank, attacking the proclamation of neutrality in the Letters of Helvidius, and supporting the Virginia resolutions of 1798 ; Gallatin denouncing the treaty made by Jay, and crying out against the alien and sedition acts; these were the Republicans of the old school. But the old school no longer existed, or existed in Jefferson alone. Change of place had, in the Secretaries, wrought a change in opinions. Much of the strictness with which they had construed the Constitution when in Federal hands did not seem necessary now that the Constitution had passed to Republican hands, and the proposed amendment was received by all save the Secretary of the Navy with respectful silence.

From his Cabinet, Jefferson now turned to his friends. But his friends gave no encouragement whatever to the plan, and he once more turned to his Secretaries. Before them in August he laid another amendment, in length shorter than the first, but in substance much the same.* One provision made Louisiana a part of the United States. Another gave to white men all the civil rights and laid on them all the obligations of citizens of the United States in like situations. A third set apart the territory west of the Mississippi and above the Arkansas for the Indians. The fourth and the strangest of all related to Florida. Not a foot of that country belonged to the United States. Every inch of it was still the property of Spain. Yet he proposed to announce to the world that it would some day be ours, and that when it was "rightfully obtained" it should, like Louisiana, be made a part of the United States. Again the Secretaries received the suggestion of

* Jefferson to Gallatin, August 23, 1803. Gallatin's Works, vol. i, p. 144. Jefferson to Madison, August 25, 1803 ; to Lincoln, August 30, 1803. Jefferson's Works, vol. iv, pp. 501–505.

an amendment in silence. But his friend, Wilson Cary Nicholas, spoke out, told him that the Constitution needed no amendment, assured him that the treaty-making power covered the case, and begged him to keep his doubts to himself. Let the Senate once know that he believed the treaty to be unconstitutional, and they would reject it. Let them reject it, and the people would accuse him of a wilful breach of the Constitution.*

Advice such as this might be expected from a Federalist, but it ill became so stanch a Republican as Nicholas and was not quietly received by Jefferson. When, he wrote in reply, he considered that the bounds of the United States were fixed in 1783, when he considered that the Constitution expressly declared that it was made for the United States, he could not believe that the framers ever intended to give Congress power to take any foreign nation — as England, or Ireland, or Holland — into the Union by treaty. Such a construction would put the treaty power above the Constitution and turn the paper on which that document was written into a blank sheet.† This protest made, Jefferson, after his usual fashion, gave way, and when the eighth Congress, in obedience to his proclamation, began its session on October seventeenth, the message did not contain one word on the need of an amendment.

Each House was informed officially that Louisiana had been ceded to the United States, and that, when the treaty had been ratified, it would be necessary for Congress to provide for the immediate occupation and temporary government of the new country. On October nineteenth the treaty and conventions were ratified; the ratifications promptly exchanged for those of the First Consul, and, three days later, the whole matter was before Congress in order that stock might be issued to pay for Louisiana.

In the House Mr. Griswold, as leader of the Federalists, moved a call on the President for letters and documents. He

* Wilson C. Nicholas to Jefferson, September 3, 1803. Jefferson Manuscripts.

† Jefferson to W. C. Nicholas, September 7, 1803. Jefferson's Works, vol. iv, p. 505.

would have a copy of the treaty of 1800 ceding Louisiana to France; a copy of the deed of cession executed in accordance with that treaty; all letters showing the assent or dissent of Spain to the purchase of the province by the United States; and all other documents tending to show whether the United States really had acquired any title by the treaty with France.

By the treaty of San Ildefonso, said Mr. Griswold and those who supported him, His Catholic Majesty bound himself to make over the province of Louisiana to the Republic of France six months after certain conditions had been performed. The treaty between France and the United States mentions this fact, but it does not state that these conditions have been fulfilled and that an actual transfer has been made. All the document before us says is, that Spain has promised to cede Louisiana to France. Has she done so? If not, it follows that France has no title; that she cannot give one to the United States; and that we are wasting our time passing laws for the occupation of a country and the governing of a people we do not and cannot possess. As to this there must be no doubt. We must know, should Spain refuse to deliver Louisiana to France, if France can deliver it to us. We must know if Spain is likely to refuse; and to know all this we must have before us the papers called for in the resolution.

We rejoice, said the Republicans, that the members on the other side of the House are now willing to own what they have always denied, that this House has a constitutional right not only to call for papers, but to debate whether it will or will not carry a treaty into effect. In 1796 we were told we had no right to call for papers, no right to make inquiry, no right to deliberate. Our duty then was to hurry through all necessary measures without asking, Is the treaty good or bad, does it promote the interests or threaten the welfare of the United States? Now we are told to stop and consider. This, unquestionably, we have a right to do. If the House has the smallest doubt as to the validity of the title, a call for the papers ought to be made. Happily, no such doubt exists. The President has laid before us a document. He tells us it is a treaty duly executed and making over to us Louisiana.

The first article affirms the right of France to the sover-

eignty of the soil, and binds her to put us in possession of that soil the moment we have fulfilled the stipulations in consideration of which the country and the people are to be surrendered. From the nature of our Government these stipulations can only be carried out by laws passed by Congress. The President asks Congress to pass the needed laws. Congress attempts to do so, and at once endeavors are made to hinder, to frustrate, to thwart legislation by setting on foot inquiries that mean nothing and have no bearing on the subject in the least. And this, too, by men who have ever held that, in the matter of carrying a treaty into effect, the Constitution has given the House no discretion whatever. Where, then, is the necessity of calling for papers if we must, in the end, put the treaty into effect? Information of the kind now wanted can only be asked for two purposes: To enable the House to judge if it be well to sanction a measure that carries on the face of it proof of its impolicy, or to enable the House to punish a minister who has betrayed his trust. There is therefore a vast difference between a call for papers in 1796 and a call for papers in 1803. In 1796 the treaty of Mr. Jay had excited public abhorrence. The members of the House of Representatives despised it, and when they demanded papers from the President they actually spoke to him thus: "Sir, we detest your treaty. We feel an invincible repugnance to giving it our sanction. But if, by showing us any information in your possession, we can be convinced that the interests of the United States have been well secured; that, wretched as this treaty is, the terms are as good as could be had; that, bad as the terms are, it is politic to accept them—we will, loth as we are, pass the laws to put it into force." Can the House hold such language now? Can they say the present treaty is odious to the people? No, it has been hailed with shouts of joy by the nation. If this is so, if, in place of being discontented with the terms, we are lost in amazement at the vast benefits we have so cheaply gained, why should we call for papers? Why take exception to our own title? Why refuse the offered possession? But a few months ago certain members were eager to leap the bounds of law, raise a great army, and make themselves masters of New Orleans. Now the very same

members exhibit a strange regard for law and are very anxious that we should not touch Louisiana till our right and title are beyond dispute. They are beyond dispute. The treaty and the conventions have made them so. The first article affirms that France does own Louisiana by virtue of the treaty of San Ildefonso, and that she cedes it to the United States. The third article looks to the future government of the people of Louisiana by the United States. The fourth declares in what way the territory and the people shall be made over to the United States. This is all the information we need; and, in the face of this, to ask the President if we really have acquired citizens for whom we must pass laws, is a mockery of him, of this solemn business, and of ourselves. The House thought so too, and on a yea and nay vote the resolution was lost by fifty-seven to fifty-nine.

Next day a motion came up in the Committee of the Whole to carry the treaty into effect. For some time nobody rose to speak. At last, after a few minutes of silence, Mr. Griswold again stood up and opened the debate for the Federalists.

The treaty he pronounced unconstitutional and impolitic. It was unconstitutional, in the first place, because treaty-making power does not extend to the incorporation of foreign soil and a foreign people with the United States. The words "new States may be admitted by the Congress into this Union" meant new States carved out of the territory belonging to the United States at the time "this Union" was formed. But even if such power of incorporation did exist, and he was far from admitting it, the power surely belonged to Congress and not to the President, nor to the President and the Senate.

It was unconstitutional, in the second place, because the seventh article gave to the ships of France and Spain the right to enter the ports of Louisiana without paying a cent more duty than was exacted from the ships of the United States. Elsewhere a discrimination was made between American and foreign bottoms. Should a French or a Spanish vessel laden with goods from Cadiz, from Bilboa, from Marseilles, enter the port of Boston, she would, before unloading, be forced to pay a duty of fifty cents a ton. Should she, however, enter

the port of New Orleans, she would find the duty reduced to six. New Orleans, therefore, was to enjoy a privilege that would enable her to trade with the French and Spanish colonies on better terms than any other port. She was therefore a favored port. But this could not be allowed. The Constitution declares that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another."

It was unconstitutional, in the third place, because the President and Senate had attempted to regulate trade with France and Spain, and had, in so doing, usurped a power expressly given to Congress—the power to regulate trade with foreign countries. It was impolitic because we could not govern so vast a wilderness and a people so unlike our own in language, in manners, and in religion.

The Republicans held that this action of the President was perfectly constitutional. The right to acquire territory was a sovereign right, and as such belonged to each one of the original thirteen sovereign States. But a State could not acquire territory except by conquest or purchase. Conquest came of the war powers; purchase belonged to the treaty powers. But the States, when they ratified the Constitution, surrendered to the Federal Government the powers of levying war and making treaties. They had, therefore, with this surrender, lost the right to acquire new soil by conquest or purchase, and had given it to the Congress of the United States. As to the preference given to New Orleans, the language of the Constitution is "ports of one State." Whatever might become of Louisiana in the future, it was not then a State; it was a Territory bought by the United States. It was in the condition of a colony whose commerce could be regulated without reference to any provisions in the Constitution regarding States. The right to provide for the general welfare, again, was surely a treaty power. Why not, then, increase our domain, if conducive to the general welfare?

This, the Federalists replied, has nothing to do with the question in dispute. It is not denied that we can purchase and hold Louisiana, but it is denied that either Louisiana or any other foreign country can be incorporated into the Union

by treaty. As this country has been ceded to the United States on condition of incorporation, and as this condition is unconstitutional, the treaty and the cession fall to the ground.

The Republicans were determined the treaty should not fall to the ground, and, by a vote of ninety to twenty-five, carried three resolutions in the Committee of the Whole. The first declared that provisions ought to be made to put the treaty into effect. The second sent to a special committee that part of the President's message which related to a provisional government. The third sent the convention relating to the payment of sixty millions of francs to the Committee of Ways and Means. In these the House concurred.

When the bill to create stock to be issued in part payment of Louisiana came up in the Senate, the constitutionality of the treaty was again debated. Each side took the same ground and employed the same arguments their friends had used in the House. Indeed, nothing new was said by either party till Mr. Timothy Pickering startled the Federalists with an argument that might have been made by the warmest States-rights man that heard it. To his mind, the treaty between the United States and France was unconstitutional because it contained a stipulation no power then existing could carry out. In the third article were the words "the inhabitants of the ceded territory shall be incorporated into the Union of the United States." But who, he would like to know, was competent to carry out such an act? The President and Senate were not; the President and Congress were not. Neither could it be accomplished by an amendment to the Constitution passed by two thirds of both Houses and ratified by three fourths of the States. He firmly believed the assent of each and every individual State was necessary before a foreign country could join the Union.

The case was like that of a commercial house where the leave of each of the old partners must be had before a new one could come in. The Constitution did indeed declare "new States may be admitted by Congress into this Union." But the words meant domestic States, not foreign States. They meant States carved out of the territory owned by the United States when "this Union" was formed. His argu-

ment fell on dull ears, and, when the yeas and nays were taken, the yeas had it by twenty-six to five.

Thus were settled two constitutional principles of great importance. The first established the right of the President and Senate to buy foreign soil; to this both Federalists and Republicans agreed. The second established the fact that foreign soil could, by the treaty power, be incorporated into the Union. These questions disposed of, a third—How shall the country thus acquired be governed?—at once arose. The Senate was first to attempt an answer in a bill to authorize the President to take possession of the territory. By it, till such time as Congress should provide a temporary government for Louisiana, all the military, all the civil and judicial powers were to be vested in such persons and exercised in such manner as the President should direct. To the Federalists the purpose and the meaning of this bill were as plain as they were outrageous. Between the day when the United States should take possession and the day when Congress should provide a temporary government some time must necessarily elapse. During this time the old form of government, based on the worst form of Spanish despotism, was to be continued. Jefferson was to take the place of King Charles, and, without even consulting the Senate, fill every place, from governor, intendant, alcalde, down to keeper of the public stores, with creatures of his own; it was, in short, to legalize on the soil of the United States a government under which the people possessed no civil rights; nay, could be punished for even wishing to enjoy them. The bill was therefore declared by the Federalists to be unconstitutional. It was combining in the hands of the President legislative, executive, and judicial power; for he was not only to appoint public officers, but to determine in what manner they should act.

This, said the Republicans, is very far from being the case. The President is not to exercise one of the powers; he is to choose the men who are to exercise certain powers, and nothing more. But even if the bill did combine in his hands powers legislative, executive, and judicial, it would still be a proper bill. Whatever limitations the Constitution may fix

to the power of Congress over the States, it fixes none to the power of Congress over the Territories. The Constitution is made for the States and not for the Territories. It does not extend to the Territories. What else is the meaning of the words, "Congress shall have power to make all needful rules and regulations respecting the territory and other property belonging to the United States"? Is not this grant unlimited? Has it not always been so construed? Who makes laws in the Territories of Indiana and Mississippi? The people? No. The Congress? No; the Governor and the judges appointed by the President with the consent of the Senate. Could we pass such a law for the government of a State? We certainly could not. Does not this show that the Constitution is inoperative in the Territories? We are to govern Louisiana not by right of any grant of power expressed in the Constitution, but by right of acquisition, and this right we are to use as we think fit. The House thought this reasoning sound, and, after making two trivial amendments, sent the bill back to the Senate. The Senate refused to accept the amendments. A conference followed; the amendments were retained, and the signature of the President made the bill a law.* This act, the first of the session, was now followed by two others. One directed the issue of stock with which to pay France for Louisiana.† The other provided for the payment of three and three quarter millions of dollars to the citizens of the United States holding the claims against France assumed by the United States in the treaty.‡

Nothing now remained but to make over the ceded country to the United States. It had not as yet been delivered to France; but for this purpose His Catholic Majesty had commissioned the Marquis of Cassa Calvo and Don Juan Manuel de Salcedo, and Napoleon had sent over Peter Clement Laus-

* Approved October 31, 1803.

† The amount authorized was $11,250,000, bearing interest at six per centum per annum, and redeemable in four annual instalments. The Convention provided that the final payment should be made fifteen years after the exchange of ratifications. But the law of November 10, 1803, provided for shortening this period.

‡ This act set aside $3,750,000, of which $3,738,268.98 were used. The total cost of Louisiana was, to June 30, 1880, $27,267,621.98.

sat. These three on the thirtieth of November, followed by a great crowd of priests and people, went to the hall of the Cabildo. There at high noon Laussat delivered the order of the King of Spain for the transfer of the province to France, and displayed his authority from the First Consul to receive it. Salcedo thereupon gave up the keys of New Orleans. Cassa Calvo from the balcony absolved the people from all allegiance to Spain, and, in the presence of the troops assembled on the Place d'Armes, the banner of Spain was lowered, the tricolor raised, and the dominion of Spain in Louisiana was ended forever.

Laussat brought with him no French troops. The American Commissioners had not yet come, and it was feared that, when the Spanish soldiers left, New Orleans would be given over to plunder and rapine. The free negroes, the Mexicans, all the debased and lawless members of the community, would rise, it was thought, the moment they ceased to feel the restraint of military government, and begin to burn, rob, murder, and destroy. So likely did this seem that Americans whom business or pleasure had brought to the city—ship captains and mates, supercargoes, merchants, clerks, and seamen—formed a volunteer company, and, joined by a few young Creoles, offered their services to Laussat. He gladly accepted them, and thenceforth armed bands patrolled the streets by day and by night.

While these men were keeping order at New Orleans, Jefferson was hurrying on the preparations for receiving the province from France; and well he might hurry, for the Spanish Minister, in the name of his master, had three times protested against the sale.* France, he claimed, had not made good the conditions in the treaty of San Ildefonso. By that treaty she was to secure the recognition of the King of Tuscany by all the powers of Europe. No such recognition had been obtained either from the court of London or the court of St. Petersburg. Louisiana, therefore, did not belong to France, and, not being hers, she could not sell it to the United States.†

* September 4, 1803; September 24, 1803; October 12, 1803.

† El Marquis de Casa Yrujo to Madison, September 24, 1803.

Fearing that the protests at Washington might be followed by armed resistance at New Orleans, Jefferson made ready to meet force with force. He ordered part of the militia of Ohio, of Kentucky, and of Tennessee to be in readiness to march at a moment's notice, gathered some troops at Fort Adams, sent others to Natchez, and bade Governor Claiborne bring some with him from Mississippi.

William Charles Cole Claiborne had just reached his twenty-eighth year. He was a native of Virginia and traced descent from that William Claiborne whose struggle with the family of Lord Baltimore fills so large a place in the early history of Maryland and Virginia. He received his education at the Richmond Academy and spent some time at William and Mary College. But his father was poor; he was forced to make his own way in the world, and, when scarcely fifteen, set off in a sloop for New York. There the first Congress under the Constitution was in session, the clerk of the House of Representatives was John Beckley, and to him as an old family friend young Claiborne applied for work. A place was made for him in Beckley's office, and for four years he filed papers, prepared the journal for the printer, read proof, and made friends. In 1790 Congress moved to Philadelphia, and there he was much in the company of two men to whose advice and friendship his political career was largely due. One was Thomas Jefferson, then Secretary of State; the other was John Sevier, delegate from the territory south of the river Ohio. By Sevier he was urged to read law and go West. Acting on this advice, he went back to Richmond, spent three months reading Blackstone and the Virginia laws, took out a license, and started for Tennessee. For a while he attempted to practice at Nashville; but his clients were very few, life on the frontier far from enjoyable, and he began to think seriously of going back to Richmond, when the people of Tennessee called a convention to frame a Constitution for a State. To this convention Claiborne was sent as a delegate. Under the Constitution thus formed, the State of Tennessee was admitted to the Union in 1796. John Sevier was the first governor, and by his influence the Legislature made Claiborne one of the judges of the Supreme Court of Law and Equity.

Hardly was he seated on the bench when William Blount was expelled from the Senate of the United States, when Blount's place in the Senate was given to Andrew Jackson, the representative, and Claiborne was sent to take the seat of Jackson in the House. His election was a flat violation of the Constitution, for he was not twenty-five years old. In Congress he sat till 1801. In the memorable contested election of that year he held the vote of Tennessee and cast it regularly for his old friend Jefferson. His reward was not long delayed, and in 1802 he was sent by Jefferson to govern Mississippi Territory in place of Winthrop Sargent, whose term had just expired. Living so near New Orleans, he was now chosen one of the Commissioners to receive Louisiana from France. With him on the mission was joined General James Wilkinson. The two met at Fort Adams in December and at once set out for New Orleans. The time fixed for the entrance into the city was Tuesday the twentieth. Early on that day the American troops, with the bands playing the airs of France and the United States, moved in order of battle to the city gates. There the Spanish troops in like order received and then escorted them to the Cabildo on the Place d'Armes, where the Commissioners exhibited their credentials to Laussat.

When the credentials of the American Commissioners, the treaty, and the powers of the French Commissioners to transfer Louisiana had been read to the crowd that filled the Cabildo, the delivery of the Province to the United States was proclaimed, the keys of the city were handed to Claiborne, and the subjects of France absolved by Laussat from allegiance to the First Consul. Claiborne then bade them welcome as citizens of the United States. They were assured that their liberty, their property, their religion, were safe ; that their commerce should flourish, that their agriculture should be protected, and that they should never again be transferred.*

The speech made, the Commissioners passed out into one of the balconies that looked down on the Place d'Armes

* In this transfer Upper Louisiana was not included. Indeed, it was not till March 9, 1804, that Major Amos Stoddard, as agent of the French Republic, received Upper Louisiana from the representatives of Spain. On March 10, 1804, Major Stoddard delivered the Upper Province to the United States.

crowded with men of six nationalities, where the tricolor which for twenty days had floated over the city was slowly lowered and the stars and stripes slowly raised till they met midway of the staff and were saluted. The flag of the United States was then raised, while that of France was drawn down and delivered into the hands of a French officer. As he marched off toward the barracks with the flag wrapped about his waist, the Commissioners went back to the hall of the Cabildo and to a fine dinner made ready for them by the order of Laussat.

To the crowd that stood that day on the Place d'Armes the promise of Claiborne that this transfer should be the last meant nothing, for, within the lifetime of men then living, Louisiana had changed her rulers six times. Ninety-one years before, when scarcely a thousand white men dwelt on her soil, Louis XIV had farmed Louisiana to Antoine Crozat, the merchant monopolist of his day. Crozat, unable to use it, made it over in 1717 to John Law, Director-General of the Mississippi Company, which surrendered it in 1731 to Louis XV, who gave it in 1762 to the King of Spain, who made it over to Napoleon, who sold it to the United States.

In none of these many transfers was anything approaching a complete and accurate boundary ever drawn. When Claiborne received it on behalf of the United States the eastern boundary was the Mississippi river from its source to the parallel of thirty-one degrees. But where the source of the Mississippi was no man knew, and what became of the eastern boundary below the parallel of thirty-one degrees was long unsettled. Americans claimed at least as far as the Perdido river; but Spain would acknowledge no claim east of the Mississippi and below thirty-one degrees, save the island of New Orleans. The south boundary was, of course, the Gulf; but whether it went to the Sabine or the Rio Bravo was still unknown. The mountains, wherever they might be, were believed to bound it on the west, and the possessions of Great Britain, wherever they might be, to bound it on the north.

The territory shut in by these vague and general boundaries had been parted by the Spaniards into two great divisions.

The Creole who spoke of Louisiana was understood to mean the island of New Orleans and so much territory as lay west of the Mississippi from the Gulf to the town of New Madrid. All above New Madrid passed by the name of Spanish Illinois and sometimes of Upper Louisiana. A rude census taken in 1799 gave to Upper Louisiana a population of six thousand souls, and scattered them among a dozen petty settlements hard by the banks of the Missouri and the Mississippi. To Louisiana were given thirty-six thousand. Of these, some thirty-four thousand dwelt below the mouth of the Arkansas.

Indeed, the boatmen who steered the broadhorns as they floated down the Mississippi saw no town on the western bank between New Madrid and Pointe Coupée save the huts of a few Indian traders at the mouth of the Arkansas and a wretched hamlet called Concord opposite Natchez. Up the Red river were Rapide and Avoyelles and Natchitoches, which boasted of a population of sixteen hundred souls and of a great trade with Mexico. Below Pointe Coupée were three fourths of all the people and seven eighths of all the wealth of Louisiana. The plantations, the cotton-fields, the houses became more plentiful as the traveller floated by the straggling settlements of Baton Rouge, of Manchoc Parish, of Iberville, below which cotton-fields and sugar-fields followed in unbroken succession to New Orleans.

To the Americans business or curiosity brought to Louisiana, the land and the people and the great city were a never-failing source of interest and wonder. They filled their letters with accounts of the wide, yellow, tortuous river rushing along for hundreds of miles without a tributary of any kind; of the levees that shut in the waters and kept their surface high above all the neighboring country; of the bayous where the alligators basked in the sunshine; of the strange vegetation of the cypress swamps and the palmettos; of the hanging moss, of the sloughs swarming with reptiles, of the pelicans, of the buzzards, of the herons, of the fiddler crabs, of houses without cellars, and of cemeteries where there was no such thing as a grave which had been dug. The town had been laid out in 1720 by the Sieur La Blonde de la Tour, acting under orders of Bienville, and had been laid out with all the regularity of

a military camp. Had it not been for the crescent shape of the river front, the plan would have been a parallelogram. On the three land sides were low ramparts at right angles to each other. On the river side was the levee. From the gate of France on the north to the gate of Tchoupitoulas on the south the distance was a mile, and precisely in the middle of the mile was the Place d'Armes. From the river back to the rampart which shut out the waters of the cypress swamp the distance was one third of a mile. Within these limits the streets were laid out at right angles, were each thirty-two French feet wide, and bore the names of the dukes and princes of France. One was Chartres, another was Orleans, another Maine, another Bourbon, another Toulouse. Still others were named Conti and Conde, and to these in time were added Dauphine and St. Louis.

Between the day when Bienville took up his headquarters at New Orleans and the day when Claiborne received the keys of its gates the town had grown much but changed little. The old fortifications had been much improved in 1798, and a slimy ditch, backed by an earth rampart and a wooden palisade, now surrounded the city. A few rusty guns mounted on five huge bastions constituted the chief defence. One bastion stood at each of the four corners. The fifth was in the rear of the city. The people still went in and out through four gateways guarded by sentries all day and carefully shut each night at nine. The four gates closed four thoroughfares. Through the river gate of France went the road to the plantations down the river. Through another went the bayou road, along which was just beginning to spring up the fashionable Faubourg St.-Jean. Through the southern river gate went the Tchoupitoulas road, and on this, where the plantation of the Jesuit fathers had once been, was the Faubourg Ste.-Marie. Of late years so many thousands of strangers, Frenchmen and Irishmen, Spaniards and Americans, had come to New Orleans that a new city was fast growing without the ramparts of the old.

With the strangers had come ships, commerce, and trade. Along the once sleepy levee, where in former times a dozen ships could rarely have been counted, were now to be seen two

hundred ships and river craft drawn up three deep. It was mentioned with pride that in 1802 the products exported were worth two millions of dollars, that the imports had reached two millions and a half, and that ships registering in all thirty thousand tons—about the capacity of four ocean steamers—had sailed from the port loaded. The condition of the city, however, gave no indication of this commercial prosperity. The streets, save a few, were unpaved, undrained, and as filthy as in the days of Bienville and De la Tour. Each heavy thunder-storm turned the city into a pond and filled the streets from side to side inches deep with water. The mildest rain made them impassable with mud. In dry seasons they were rough with the mounds thrown up by the crayfish.

The buildings which bordered the streets were the admiration of every traveller. Men accustomed to the architecture of the cities of the North looked with wonder on the endless variety of form and the confusion of color displayed on every side. Some were of *adobe* with half-cylindrical tiled roofs. Some were of brick covered with yellow stucco faded and streaked by the sun and rain. On every hand were arcades and inner courts, open galleries and *porte-cochères*, verandas, lattices, dormer windows, and belvederes. No city in the North could produce such specimens of wrought-iron work as adorned the balconies and were to be seen in the gateways, the transoms, the window gratings of the houses in New Orleans. No city could boast a finer public building than the Cabildo; no city could show a finer church than the St. Louis Cathedral. Yet among all these buildings not an exchange, not a tavern was to be seen; the levee and the coffee-houses did duty instead. Men who came to trade took up their quarters in the boarding-houses kept by mulattoes, and sought for the merchants on the levee. There, during the morning of each week-day, bales of cotton, casks of molasses, tobacco, sugar, flour, all the produce of Louisiana and all the produce of the Northwest, from hams and pork to the broadhorns which bore them down the Mississippi, were bought and sold. There in the cool of the day the people came to enjoy the air. Hardly had the sun set when the whole town was astir. The coffee-houses then became crowded,

the billiard-rooms grew noisy, the levee swarmed with people. Some came to take part in the dancing and drinking, the carousing and singing that went on upon the decks of the boats moored to the river bank. Some came to walk. Some to seek a mistress among the quadroons who, with their chaperons or their mothers, sat under the orange-trees that still lined the river-bank. The lot of these women was indeed an unhappy one! Their stain of white blood raised them far above the negroes; their stain of negro blood dragged them far below the whites. Law and custom forbade them to marry and left them to drag out a wretched existence or become the mistresses of the whites. To suppose that they bore any likeness to the prostitutes who plied their calling in the Northern cities would be a great mistake. They held a recognized place in the social scale, and that place, such as it was, no one considered dishonorable. No man addressed them till he had been properly introduced. No engagement was made till the mother approved, and, once made, it was kept most faithfully by the woman. They could not, indeed, attend the balls to which white women went; but their own assemblies were accounted splendid affairs and were attended by all the fine young men in the city. They could not enter the lower boxes at the theatre, but the upper boxes were set apart for them, and to these they were made welcome.

The theatre was then open on three nights each week. The beating of a drum gave notice of the nights, one of which was always Sunday. Sunday, indeed, was a gala day. Travellers from the North were horrified to see the shops open, the streets more gay, the market more crowded, the coffee-houses and the billiard-rooms more frequented, on Sunday than on any other day of the week. Religion, it is true, was not wholly neglected. To go to confession, to hear mass, to say a prayer in the cathedral, were duties regularly performed by even the most careless; but, these duties done, the rest of the day was spent in idleness and the pursuit of pleasure. To drop in at some coffee-house for a game of cards; to look on while an exciting game of billiards was played; to saunter to the rear of the city where on the marshes the negroes worshipped the spirits of good and evil with all the barbaric rites

of Africa; to see a new play at the theatre, attend a masked ball, or go out by the bayou road for a dance at the famous Tivoli Garden and hurry back before the gates were shut and the Alcalde and the Alguazil began their rounds, were the favorite amusements of the day.

The Alcalde formed part of a municipal government as strange to an American as the city and its people. Over New Orleans and its dependencies in Spanish days presided a Cabildo, or City Council of six hereditary Regidors; two Alcaldes, a Procureur-General, a Secretary, and the Governor of the Province. Five of the Regidors held offices of great weight. One was known as Alferez Royal, and bore the royal banner; another was Alcalde Mayor Provincial; another, Alguazil Mayor; a fourth, Depository-General; a fifth, Receiver of penas de cámara, or fines for the use of the royal treasury. The Governor presided over the Cabildo, and met it in the City Hall on Friday of each week and on the first day of each new year. At the weekly meetings such business was done as concerned the city and the province. At the new-year meeting the Cabildo chose two Judges or Alcaldes Ordinary, the Procureur-General, and a Mayordome de propres, or manager of rents and city taxes. The Alcaldes were judges of civil and criminal law; never appeared in public without their wands of office; visited the prisons each Friday, examined the prisoners, and set free such debtors as seemed fit subjects of mercy. Each night one of the Alcaldes, with the Alguazil Mayor and the Scrivener, walked the streets of the city to see that the laws were obeyed and that peace and quiet prevailed. Three times each year, on the eves of Christmas, of Easter, and of Pentecost, the Governor went the rounds of the prisons with the Alcaldes, and never failed to set some petty criminals free. The authority of the Alcaldes spread over the city and five leagues around it. At this limit the rule of the Alcalde Mayor Provincial began. Before him came every offender who had done his deed out of the bounds of New Orleans, or the villages; or, having done it in the city or the villages, fled for refuge to the country. And woe to the criminal who, friendless and rankless, came before this Alcalde! For him justice was speedy and sure. If he had reviled the Saviour or the

Blessed Virgin, his property was confiscated and his tongue cut out. If he had vilified the King or the Queen, or any member of the Royal Family, half his property was taken and he was well flogged. If he had stolen the sacred vessels from a holy place, or had robbed a traveller on the King's highway, or had murdered a fellow-creature, or assaulted a woman, he was given over to the Alguazil to be put to death with every mark of shame. The property of the ravisher was given to the victim. The murderer was dragged to execution at the tail of a horse. False witnesses were exposed to public shame and banished. Adulterers were given over to the injured husband to do with as he would. But if he put the man to death he must the woman also.

Not one of these laws was printed, save in the form of a digest, prepared and proclaimed by the first Spanish Governor, "Cruel O'Reilly." They did not exist even in writing. The Abogado, whose business it was to give legal advice to the Governor, and whom the judges consulted on points of law; the Assessor, who performed a like duty to the Intendant; the judges and the three attorneys knew the laws, but none others. In general, then, the decisions of the courts were such as the judges thought proper, not such as the law prescribed.

Of courts, Louisiana may be said to have had five. There was the Governor's court, with civil and military jurisdiction over all the province. There was the Intendant's court, where cases in admiralty and revenue suits were tried. There was the court of the two alcaldes of New Orleans, the tribunal of Alcalde Provincial, and the ecclesiastical tribunal, with jurisdiction over all matters concerning the church. But there were besides these a host of petty magistrates and officers endowed with judicial functions; Alcaldes de barios for the city; syndics and commandants for the country. The Alcaldes de barios were four in number, presided over the four quarters of New Orleans, and tried any case of less than ten dollars' value. The commandants of the posts and districts heard suits involving sums of less than one hundred dollars. The syndics were the busiest of all. They policed the roads, they guarded the levees, and kept a careful watch over coasters, travellers, and negroes.

No sooner would a ship draw up to the river bank than a syndic, note-book in hand, would be on board. He would demand the captain's passport. He would examine the ship's papers, call off the list of the crew, peep into the hold at the cargo, and note down whence the ship came, how long the captain wanted to stay, and what sort of a cargo he was going to buy. To travellers by land the syndics were intolerable nuisances. Stationed along the roads three leagues apart, they were bidden to stop and question every stranger who passed by. They would read his passport, examine the brand of his horses, see that he had no more and no less than the passport called for, ask his business, and require him to tell them the latest news. If he told them anything which in their opinion the public ought not to know, they made a careful note, and forbade him to mention the subject to a living soul. They were, indeed, the censors of public opinion. They affirmed or denied rumors, explained the acts of government officials, told the people whatever it was proper to know, and kept themselves informed by carefully reading the "Moniteur de la Louisiane."

The rulers of the Province of Louisiana were a Governor, a Lieutenant-Governor, who ruled Upper Louisiana; an Intendant, charged with the management of trade and commerce, ships and customs; and in each one of the innumerable districts a Commandant. Under the Intendant were the Contador, who did the work of a modern controller; the Treasurer, who was a mere cashier; the Interventor, who bought all public supplies; the Surveyor-General, the Harbor-master, the Store-keeper, and the Assessor, who gave the Intendant legal advice. The Commandant was a man of military training, and joined half a dozen offices in one. He was a police magistrate, kept the peace of his district, examined travellers, and suffered none to stop in the country without his leave. He was an officer of the customs, and saw to it that no smuggling went on. He was a land commissioner, and certified that every acre petititioned for by the people was vacant before it was granted. He was notary public, and registered the sale of land and slaves. He was a sheriff, and levied executions on property and attended to the sale. When he commanded a

garrison of twenty men, he was Deputy-Intendant, and all that concerned trade and commerce came under his control.

It was from trade and commerce that the revenue of Louisiana was chiefly derived. Every ship, great or small, paid a pilotage of twenty Spanish milled dollars, of which seven went into the public treasury. All goods imported or exported paid a duty of six per cent. There were taxes on the value of all shipping sold,* taxes on legacies,† taxes on salaries paid by the Government,‡ taxes for offices bought, and taxes on licenses to sell liquor.# Many as were the sources of revenue, it was a prosperous year whenever one hundred and twenty thousand dollars came to the treasury coffers. As the expenses of Government were six hundred and fifty thousand dollars, there was each year a heavy deficit. This was made good in part by money sent from La Vera Cruz, and in part by the issue of certificates, which the officers in the department of finance bought up at thirty per centum discount and the King redeemed at par.

Such was the province and such the city which, in December, 1803, became the property of the United States. As yet Louisiana had merely been taken possession of. Not an act of Congress, not a revenue law, not a custom-house regulation had been spread over it. There were no courts for the meting out of justice according to the statutes of the United States. There was no officer from whom American sea-letters, registers, and licenses could be had for ships. The need for such laws and papers was pressing and was felt first by the merchant class. Indeed, the new year was hardly in when a petition from the merchants was on its way to Congress. They complained that while owing allegiance to the United States, they were still subject to the laws of Spain; that while nominally enjoying the rights of American citizens, they were paying import and export duties according to the Spanish tariff,

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* Duty of six per cent.

† Legacies given to heirs paid two per cent duty; legacies given to strangers paid four per cent.

‡ If greater than three hundred dollars per year.

Forty dollars per year in Lower Louisiana; thirty dollars in Upper Louisiana.

and, for want of sea-letters and coasting registers, were forced to tie their ships to the levee and see them go to ruin and decay. The petition was most timely, for the very day it reached the House of Representatives a bill came down from the Senate giving to Louisiana a government and laws. So much of the purchase as lay south of the Mississippi Territory and south of the thirty-third parallel from the Mississippi river to the western boundary of Louisiana was by the bill cut off and named the Territory of Orleans. On the rest was bestowed the name District of Louisiana. The selection of laws, the execution of laws, the administration of justice in the District of Louisiana, were given in charge to the Governor and judges of the Indiana Territory; but to Orleans was given a territorial government of its own, and over it were spread twenty-two specified acts of Congress.

The government, the bill provided, should consist of a Governor, to be appointed by the President for three years; of a Secretary to hold office during four years; of a Legislative Council of thirteen; and of one Superior Court and of such inferior courts and justices as the Council should see fit to create. In the stormy days of the Alien Act nobody had been louder in declaring trial by jury to be the bulwark of civil liberty than Breckenridge, who moved a committee to bring in the Louisiana Bill, and Jefferson and Madison, who are believed to have framed it. Yet these men were now not ashamed to restrict trial by jury to criminal prosecutions and to civil suits in which the sum involved was at least one hundred dollars.

With the plan as a whole the House had little fault to find; but those particular sections which restricted trial by jury and defined the powers and manner of choosing the Council aroused a fierce and stubborn opposition. The thirteen councillors were to be appointed by the President, and by the President alone. The Senate was to have no voice in the approval; the people of the Territory were to have no voice in the selection. As the people were to have nothing to say concerning who should sit in the Council, so the Council were to have nothing to say concerning what it should do. It could not fix the time of meeting nor the time of adjournment; there were

to be no regular sessions. The Governor was to call them together and the Governor was to bid them depart; and when they were assembled their legislative powers were to be nothing. It was the Governor who, with the consent of the Council, was to repeal or amend the laws already in force, and it was the Governor who was to submit to them drafts of new laws.

This bill, said the defenders of it, does indeed contain elementary principles of government hitherto unknown in the United States. But it is also true that the United States has never before been called on to set up a government for such a peculiar people. Nowhere else in the United States can be found men speaking so many tongues, representing so many races, showing so many different manners, and living in such different ways as on the soil of Louisiana. There, rarely intermarrying, never commingling, live Americans, Creoles, Frenchmen and Spaniards, emigrants from Malaga and the Canaries, wanderers from Acadia, Germans, Mexicans, negroes, and men of every grade of negro blood from the quadroons and octoroons to mulattoes. Ruled for forty years by Spanish officers, governing according to their whims and upholding their whims by show of military force; ground down by monopolies and stripped of every semblance of human rights, they cannot be considered as in any sense fit for a sudden gift of liberty. Let them have liberty by degrees. Let them first show themselves fit to be free. Let them learn, under the mild and gentle rule of the government we propose to set up, what are the rights of free men, what are the principles of free government, and when they have learned this it will be full time to give the elective franchise and suffer them to choose legislators for themselves.

This bill, said its enemies, violates the treaty, the Constitution, and every principle of American republican government. It does not show one trace of liberty. It denies to the men of Orleans rights solemnly promised them by the treaty of purchase. It sets up a complete despotism. The people have nothing to say in the choice of a Legislative Council. The Legislative Council have nothing to say in the choice of laws. The President names the Governor, and the Governor,

in the language of the bill, is to "make the laws." When he has made a law he is to lay it before the Council; but not for the purpose of debate, of amendment, of correction. No. With the air of an Eastern potentate he is to say: Here is the law; will you take it or reject it? There is no chance given them to suggest amendments. They must approve or disapprove, and nothing more. And suppose they do not approve; what then? Why, the Governor may, if he choose, prorogue them, send them home, and, as they are not paid when not in session, such dismissal is the same thing as taking money out of their pockets. Thus it is that the Governor has the Legislative Council in his power. If they will not do his bidding, he will not suffer them to meet, and if they do not meet they cannot get any pay. Was there ever such a government in this country since the days of the colonial governors? Was it not against just such government as this that the colonies rebelled?

But there is yet another way in which this government proposed to be set up by this bill resembles the government put down by the Revolution. Trial by jury is not secured to the people. To this they have a right. Does not one amendment to the Constitution declare that in all criminal prosecutions the accused shall enjoy a speedy trial by jury? How, then, can we say that in Louisiana there shall be no jury trial in criminal prosecutions which are not capital unless one of the parties demand it? Does not another amendment to the Constitution declare that in all suits at common law where the value in controversy exceeds twenty dollars the trial shall be before a jury. How, then, can we say that in Louisiana there shall be no trial by jury unless the sum involved be at least one hundred dollars. If we govern Louisiana must we not govern it on constitutional principles? Have we a right to do there what the Constitution expressly forbids us to do elsewhere? Gentlemen say the Constitution applies to the States and not to the Territories. Be it so; and we have still the treaty left. By that treaty we are forced to bestow upon the people of the ceded territory all the rights and immunities of citizens of the United States, and one of those rights is trial by jury. In the end the opposers of the bill carried the day. The House

was convinced that the plan of government was not republican, and the bill, amended and limited to two years' duration, was sent back to the Senate. As amended, the bill provided for trial by jury in all cases both civil and criminal, gave the President power to appoint the Council for one year, and provided that thereafter they should be elected annually by the people. To this, however, the Senate would not agree. A conference followed, the House yielded, and the bill, with all its bad features, but limited to one year, became law.

Bad as the government was on paper, it was made ten times worse by the conduct of the men chosen to carry it on. To the place of Governor, Jefferson appointed William Charles Cole Claiborne. James Wilkinson he made Military Commander, and on the bench of the District Court placed J. B. Prevost, step-son of Aaron Burr. Whatever the President may have thought of the fitness of these men, their appointment was to the people of Orleans most offensive. Laussat, who still lingered at New Orleans, wrote home that the new Government had made a most unfortunate beginning. It would, he said, have been hardly possible for Jefferson to have sent two men less fitted to win the confidence of a people than Claiborne and Wilkinson. The Governor he described as a man of many private virtues, but weak, awkward, and unfit for his place. The picture he drew of Wilkinson would have been instantly recognized by half the men in the Mississippi valley. The General was, he declared, a flighty, rattle-brained fellow, who was often drunk, who had been guilty of a hundred impertinent follies, and who had long been known in a bad way all over the province. Neither of them could read a line or converse for a minute in French or Spanish. Both were grossly ignorant of the history, the institutions, the laws, and social customs of the people they were sent to govern. Both looked down on the Creoles and the Spaniards as a debased and ignorant population, to be taught by them the blessings of American liberty. Measures which sprang from ignorance seemed, therefore, to the Creoles to be deliberate and wanton outrages on their habits, their prejudices, their natural and political rights. They saw set over them as Governor a man who combined in himself legislative, executive, and judicial powers. They saw him

sweep their language from the courts and public offices, and found themselves, in all dealings with public officials, forced to employ interpreters. They saw American judges, brought up to administer American law, attempt to administer Spanish law, of which they knew nothing, without even the help of an attorney. In the worst days of Spanish rule an appeal from the acts of the Royal Governor could always be made first to Havana, and then to the Audience which once sat at San Domingo, and then to the Council of the Indies at Madrid. But the people now learned that over the acts of this republican Governor they had no control, and that from his decrees there was absolutely no appeal.

The opposition produced by these features of the new Government was yet further increased by the emissaries of the old. Though the province had been formally made over to the United States in December, 1803, the officers and troops of Spain showed no signs of moving. While the soldiers of the United States occupied the redoubts about New Orleans, slept in tents near the marshes, and grew sick of the fever; while the Government of the United States hired buildings at great rents for the reception of provisions, hospital stores, powder and guns, tents, implements, baggage, and arms, the troops of Spain continued to hold the barracks, the hospital, the magazines, the storehouses, and regularly each day mounted guard in New Orleans. April, 1804, came before the first detachment of three hundred Spanish troops set off for Pensacola. Then the barracks were given up, but the magazines and the hospital were held. Not till July could Colonel Constant Freeman report to General Wilkinson that the powder magazine opposite the city had at last been surrendered to the United States. By the terms of the treaty the Spanish forces were to leave the ceded territory within three months; yet all through the summer and autumn, and indeed for more than a year, the principal commissioner, the Marquis de Casa Calvo, the associate commissioner, Don Joseph Martinez de Croza, the commissary of war, the paymaster of the army, the treasurer of the army, the late intendant, the commander of the galiot, officers of the revenue, officers of the custom-house, surgeons, chaplains, clerks, the town major, and regimental

officers of every rank, from colonel down to the second lieutenants of militia, continued to walk the streets of New Orleans and to talk openly of the day when the territory across the Mississippi would again be under the flag of Spain. Every American who came to New Orleans scouted the thought of giving up Louisiana as ridiculous; but to the people who dwelt in the city the lingering of so many officers so long after they should have gone about their business was proof that the recovery of the province was seriously meditated.

So firm a hold did this belief have on the minds of the people that many of them were afraid to take office under the Territorial Government, or even to show it a decent respect, lest, when the retrocession was made, they should suffer for their conduct. Indeed, when October the first came, and the Government was about to organize, five of the Legislative Council appointed by Jefferson refused to serve.* Two months went by before even a quorum could be obtained,† and by that time a remonstrance had been laid before Congress.‡ The remonstrance had been ordered at a popular meeting, bore the signatures, it is said, of two thousand heads of families, and had been carried to Washington by three commissioners. The names of the three were Pierre Sauvé, Pierre Derbigny, and Jean Noel Destréhan.

The document they presented was the work of Edward Livingston, and set forth the complaints of the people in no uncertain language. The petitioners denied flatly that they were sunk in ignorance, effeminated by luxury, debased by oppression, unfit to govern themselves; called for the evidence on which these statements had been based, and told Congress not to believe all that was said by travellers. They asserted that the provisions of the act setting up the temporary government violated the spirit and letter of the treaty, violated the principles of the Declaration of Independence, and violated their rights as men. Violated the treaty, because they had not been admitted into the Union with all the rights, ad-

* Boré, Bellechasse, Cantrelle, Evan Jones, Daniel Clark.

† December 4, 1804.

‡ Presented to the House, December 3, 1804; to the Senate, December 31, 1804.

vantages, and immunities of citizens of the United States; violated the Declaration of Independence, because grievances which held no mean place in the list that document contained had been inflicted on them;* violated the rights of men, because it stripped them of liberty, self-government, and independence. These charges the petitioners supported by long arguments, and ended with an earnest demand for incorporation into the Union, and for the repeal of so much of the law as cut Louisiana into two parts and forbade the importation of slaves.

A few days after† this remonstrance and petition had been laid before the Senate a very similar document reached the House from a convention held at St. Louis. To this convention had come delegates from the districts of New Madrid, and Cape Girardeau, Sainte Geneviève, St. Louis, and St. Charles and its dependencies, all in the District of Louisiana. Having been duly elected by the people, the delegates considered themselves as speaking for the people, and demanded a radical reform. They asked for the repeal of the law providing for the temporary government of Louisiana; for a permanent division of the territory; and sketched a plan for the government of that part in which they lived. The Governor, Secretary, and Judges should be appointed by the President, should speak both French and English, should live in the district, and own property therein to the amount prescribed in the ordinance of 1787.‡ They would have an assembly made up of two men from each county, a delegate on the floor of the House of Representatives, and the right to buy, sell, and import slaves. They would have money appropriated and land set apart for the use of schools. They would have the records of every court kept in French and English, and every contract made or judgment rendered under Spanish law left undisturbed.

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* Taxation without representation; obligation to obey laws without a voice in making them; a dependent judiciary, and an undue influence of the Executive on the Legislature.

† January 4, 1805.

‡ Governor, one thousand acres; secretary, five hundred acres; each judge, five hundred acres.

The two memorials were sent to the committee on so much of the President's message as related to Louisiana. John Randolph was chairman, and the report made to the House toward the end of January was from his hand. He declared the grievances complained of to be such as were inseparable from change of government. He declared that only under the torture could the Treaty of Paris be made to speak the language ascribed to it by the memorialists. He denied that the Government of the United States had been wanting in good faith, and ended by recommending that the right to self-government be given to the people of Louisiana. Having heard the report, the House bade a committee to bring in a bill, or bills, in accordance with the suggestion. The committee did nothing, for the very day the House gave the order a bill providing a new government for Orleans was read in the Senate.* Ten days later † another bill, extending the right of self-government to the District of Louisiana, was also read in the Senate, and in the last hours of the session both were passed by the House. By the one, the country which had been the District of Louisiana became the Territory of Louisiana, with a Governor, a Secretary, and three Judges of its own. By the other, the people of the Territory of Orleans obtained a government similar to that of Mississippi,‡ and were promised that, when the free inhabitants of the soil numbered sixty thousand, Orleans should be made a State and admitted into the Union.#

In the opinion of the three delegates, Orleans should have been made a State at once. The act, therefore, gave them great offence. From the moment of their arrival to the moment when the fate of the bill was no longer doubtful the three had behaved with great prudence. They were much in the company of the friends of Jefferson, had nothing to do with foreign ministers, and contented themselves with sending long remonstrances to the committee in charge of the bill. But the in-

* January 28, 1805. † February 7, 1805.

‡ A General Assembly of twenty-five delegates chosen by the people.

Each act went into effect on July 4, 1805. The Territory of Louisiana included the whole country north of latitude thirty-three degrees and west of the Mississippi river. The northern and western boundaries were undetermined.

stant the fate of the bill was decided, the instant they became certain it would pass, their conduct changed. They now became the close friends of the British Minister, the French Minister, and of Aaron Burr. They no longer hesitated to declare publicly that the law would not be tolerated; that they would seek redress elsewhere; and that, from what they had seen at Washington, they did not believe the Union could long hold together.* Three days after the passage of the bill the delegates set off for home. The threat of the delegates that they would seek abroad for the redress they could not get at home was not so idle as it now seems. They made it well knowing that the United States was deeply involved in a most serious quarrel with France and Spain over the ownership of West Florida. During the first session of the eighth Congress an act had been passed laying tonnage and import duties in Louisiana, spreading over it the laws relating to the bank, the treasury, the mint, the circulation of foreign coin, the collection of debts, establishing ports of entry and ports of delivery, and marking out the bounds of custom districts. A fortnight later Yrujo, with a copy of the Gazette containing it in his hand, entered the office of the Secretary of State. Storming and boiling with rage, he pointed to the eleventh section of the act and pronounced it an infamous libel and a violation of the sovereignty of Spain. And well he might, for the section gave the President most extreme power. Whenever he saw fit, Jefferson was to erect all the shores, all the waters, inlets, creeks, and bays emptying into the Gulf of Mexico, from the Pascagoula eastward, into a collection district, and provide it with a port of entry and delivery.† No boundary was fixed on the east. But the law applied no farther east than the United States claimed jurisdiction, and the United States claimed no jurisdiction beyond the Perdido river. Of this fact Yrujo was politely informed. The answer of Yrujo was a full refutation of the claims of the

* Merry to Harrowby, No. 14, March 29, 1805. Adams's Hist. of U. S., p. 401.

† "To erect the shores, waters, and inlets of the Bay and River of Mobile, and of the other rivers, creeks, inlets, and bays emptying into the Gulf of Mexico, east of the said River Mobile and west thereof to the Pascagoula, inclusive, into a separate district."—Act of February 24, 1804.

United States to West Florida, a charge that sovereignty of Spain was usurped by the act, and a demand that the law be annulled.* To annul the law was not possible. But the note had its effect, and, a few weeks later, when Jefferson issued his proclamation defining the new district, he wilfully departed from the language of the act. He then declared all the shores, waters, inlets, creeks, and rivers "lying within the boundaries of the United States" to be a collection district, with Fort Stoddert for the port of entry.† As not one foot of West Florida lay within "the boundaries of the United States," the President, by the addition of these words, destroyed the force of the act.

To understand the boundary dispute which thus arose it is necessary to recall the history of French dominion in what is now the United States; to recall how Marquette and Joliet discovered the Mississippi; how La Salle explored it to its mouth; how, standing on the shore of the Gulf of Mexico, he named the country Louisiana, and took possession of it for France; and how, in 1685, when seeking the Mississippi by sea, he reached the bay of Matagorda and founded Fort St. Louis, of Texas. By the custom of nations, the discovery and exploration of the Mississippi gave to France all the country drained by that river and its branches. The discovery of the Texas coast gave to her the water-shed of that coast, while the establishment of Fort St. Louis carried her claim along the Gulf southward to a point midway between Fort St. Louis and the nearest Spanish post. The nearest Spanish post was in the Province of Paduco. On the rude maps of the closing days of the seventeenth century Louisiana, therefore, extends from the Rio Grande to the Mobile, from the Gulf to the country beyond the source of the Mississippi river, and from the Smoky Mountains to the unknown regions of the West. To the claim of discovery and the claim of exploration was soon added a third, that of settlement; and, before the first quarter of the eighteenth century ended, Biloxi had been founded, and Mobile; the forts Rosalie, Toulouse and Tombigbee, Natchitoches and Assumption, Chartres and Cahokia

* Yrujo to Madison, March 7, 1804. † Proclamation, May 30, 1804.

erected, and the streets and ramparts of New Orleans marked out by De la Tour.

Thus firmly in possession of the Mississippi on the south and holding the St. Lawrence and the Lakes on the north, the French began to overrun the country; built Fort Lake Pepin, Fort Vincent, Niagara, Detroit, Toronto, Ticonderoga, and Crown Point; strengthened their settlements on the Mississippi and the Illinois, and, when the second quarter of the century ended, had taken formal possession of the valley of the Ohio; built Presqu' Isle and Le Bœuf, and Venango, and soon after, at the gateway of the Ohio river, came face to face with the English.

The conflict which followed has come down in history as the French and Indian War. It ought to have been called the war for possession. When it was over, French power in America was gone. By the treaty of November third, 1762, France gave to England, Nova Scotia, Acadia, Cape Breton, Canada, all the islands and all the coasts of the Gulf and river St. Lawrence, and divided her possessions in what is now our country into two parts. The line of partition was the Mississippi river from its source to the river Iberville; thence it ran through the Iberville to Lake Maurepas, and along the north shore of Lakes Maurepas and Pontchartrain to the Gulf of Mexico. All to the east she gave to England; all to the west she gave to Spain. No sooner did England come into possession of her share than she proceeded to cut it up. From the junction of the Yazoo and Mississippi rivers she drew a line due east along a parallel to the Appalachicola and down that river to the Gulf, and named the country thus enclosed West Florida. To what is now the State of Florida east of the Appalachicola she gave the present bounds and the name of Florida East. During twenty years these bounds and names remained undisturbed; then, in 1783, Great Britain made the north boundary of West Florida the parallel of thirty-one from the Mississippi to the Appalachicola, and gave the two Floridas to Spain.

Spain thus received the two Floridas from England and not from France. When therefore in 1800, by the secret treaty of San Ildefonso, Spain bound herself to return Lou-

isiana to France, she bound herself to give back what France had given her in 1762, and not what England had given her in 1783. It was, in the language of the treaty, to be the "Province of Louisiana with the same extent it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States." To the minds of Jefferson and Madison the meaning of these words was that the United States had purchased West Florida. Their reasoning was this: Spain in 1800 owned West Florida. West Florida was once a part of Louisiana. Spain in 1800 receded Louisiana to France. She therefore receded West Florida. Had such reasoning been applied to a real estate transaction in private life the folly would have been at once apparent. The treaty of 1800 was a treaty of recession. Spain then gave back to France what France had given to her in 1762, and nothing more nor less. In 1762 Spain did not own West Florida. She could not, therefore, in 1800, have receded it to France.

But neither Jefferson nor Madison would stop with the treaty of 1762. Frenchmen had built Biloxi and Mobile. The authority of Frenchmen had once been obeyed on the banks of the Perdido, and that much of West Florida at least they were determined to have. To get it, Spain must be pacified, and, as a first step toward pacification, the convention of 1802 was ratified.

After the close of the first Napoleonic war a demand had been made on Spain for indemnity. French privateers had been fitted out in Spanish ports to prey upon the shipping of the United States. Scores of American vessels had been condemned by French consuls resident on Spanish soil. Spanish subjects, under the pretended blockade of Gibraltar, had seized every American vessel that came there for convoy through the Mediterranean sea. For the depredations of the Spaniards Spain was ready to make redress; but for the actions of the Frenchmen she would not pay one single piaster. Finding her determined, the American Minister gave way and a convention was drawn up in August, 1802. This provided indemnity for the spoliation of Americans by subjects of Spain, but left the damage done by Frenchmen to be settled in the

future. Angry at the failure to provide for both sets of claims, the Senate refused to act; the convention went over to the following session, and the American Minister at the Court of Madrid was instructed to again try to have provision for French spoliations inserted.* This he did, and was assured that the demand could not be listened to; that it was wholly incompatible with the law of nations, and had been pronounced so by the most esteemed lawyers in the United States, some of whom then held office under the Government.† Not long after the convention of 1802 reached the United States, Yrujo, well knowing that the omission of the French claims would lead to trouble, submitted the question of their justness to five lawyers of high standing. Two of them were Jared Ingersoll and William Rawle, leaders of the Philadelphia bar. A third was Joseph B. McKean, son of the Governor of Pennsylvania and brother-in-law of Yrujo. The fourth was Peter Stephen Du Ponceau; the fifth was Edward Livingston. Concealing the names of the powers, Yrujo stated the case in these words: "The Power A (Spain) lives in perfect harmony and friendship with Power B (the United States). The Power C (France), either with reason or without reason, commits hostilities against the subjects of the Power B, takes some of their vessels, carries them into the ports of A, friend to both, where they are condemned and sold by the official agents of Power C without Power A being able to prevent it. At last a treaty is entered into by which the Powers B and C adjust their differences, and in this treaty the Power B renounces and abandons to Power C the right to any claim for the injuries and losses occasioned to its subjects by the hostilities from Power C." Having thus stated the case, Yrujo asked: "Has the Power B any right to call upon the Power A for indemnities for the losses occasioned in its ports and coasts to its subjects by those of the Power C after the Power B has abandoned or relinquished by its treaty with C its right for the damages which could be claimed for the injuries sustained from the hostile conduct of the Power C?" Each of the five said "No."

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* Madison to Charles Pinckney, March 8, 1803.

† Don Pedro Cevallos to Charles Pinckney, August 23, 1803.

When this bit of information and the letters which accompanied it were laid before the Senate in December, 1803, that body was less disposed than ever to approve the convention. But the purchase of Louisiana had brought up the question of the ownership of West Florida. New negotiations with Spain must be opened, and to remove every cause of irritation from the negotiation the convention of 1802 was taken up, and, with many marks of disgust and discontent, approved.*

A month later the document, duly signed, was sent off to Spain, where the United States was then represented by Charles Pinckney, of South Carolina. The Spanish Minister of Foreign Affairs was Don Pedro Cevallos. To him Pinckney at once carried the ratified convention, feeling sure that it would receive the prompt approval of Spain. Cevallos, however, hesitated, delayed, and demurred, and, while he delayed, a copy of the Mobile Act, sent over by Yrujo, came to hand. Delighted to find a new cause for delay, Cevallos at once took up the act, declared it a violation of the sovereignty of Spain, demanded an explanation† from Pinckney, and wasted a whole month in bickering. Then he consented to state precisely the conditions on which Spain would ratify the convention, and declared they were three in number. Time must be given for the subjects of Spain having claims against the United States to make ready and present their papers; the sixth article, which related to damages done by French cruisers to American ships, must be suppressed; the act setting up a custom district in West Florida must be repealed.‡

As Pinckney read these demands he seems to have gone mad with rage. All diplomacy, all policy, all good sense was laid aside, and, in a threatening letter to Cevallos, he pressed for an answer to "just one question." Was he to understand that if the sixth article was not suppressed, the convention would not be ratified by Spain? The answer he hoped would come quickly, as he intended in a few days to send couriers to all the American consuls in Spain, and to the commander of

* January 9, 1804. Journal of the Executive Proceedings of the Senate, vol. i, pp. 461, 462.

† Cevallos to Pinckney, May 31, 1804.

‡ Cevallos to Pinckney, July 2, 1804.

the American squadron in the Mediterranean. He intended to inform them of the critical situation of affairs, of the probability of war between the United States and Spain, and to bid them warn all merchant ships and be ready to leave Spain at a moment's notice.* Cevallos was greatly alarmed; but he put on a bold front, declared he did not believe the American Minister had instructions to go to such an extreme, and transferred the negotiation to Washington.† Pinckney, however, was not to be overawed; sent off his couriers, and gave out that the moment his affairs were in order he should ask for passports and quit Madrid. ‡

Late in October the news of the quarrel reached the United States, and was soon followed by a request for Pinckney's recall. The request was granted, and Monroe bidden to go with all the speed he could to Madrid.# But, while the letter was being written, he was on his way to Spain. On the seventeenth of February, 1803, he had, when about to set out for Paris to negotiate for the purchase of the island of Orleans and the Floridas, been joined with Charles Pinckney in a commission to treat with his Catholic Majesty Don Carlos IV, of Spain. The two were to treat for the settlement of the claims not included in the convention of August, 1802, and, if the island of Orleans and the two Floridas were not obtained, to secure an enlargement of the right of deposit at New Orleans, the establishment of suitable places of deposit at the mouths of the rivers flowing through the Floridas, and the free navigation of these rivers by citizens of the United States. ‖ As soon, therefore, as the treaty for the purchase of Louisiana had been concluded at Paris, Monroe made ready to join Pinckney at Madrid. But the rage with which Spain heard of the sale of Louisiana led the three French consuls to urge him not to go.△ He took their advice, and while he lin-

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* Pinckney to Cevallos, July 5, 1804. † Cevallos to Pinckney, July 8, 1804.

‡ Pinckney to Cevallos, July 14, 1804.

Madison to Monroe, October 26, 1804.

‖ Madison to Pinckney and Monroe, February 17, 1803. State Papers, vol. ii, pp. 532, 533.

△ Monroe to Madison, July 20, 1803. Manuscripts State Department. Monroe to Talleyrand, November 8, 1804. Foreign Relations, vol. ii, p. 634.

gered at Paris was commissioned Minister Plenipotentiary to England * in place of Rufus King, who had resigned and gone home. In July he reached London, was presented to the King a month later, and was hard at work on the matter of impressment when he received instructions to proceed to Madrid. †

There, in connection with Pinckney, he was to attempt four things—persuade Spain to acknowledge the Perdido as the eastern boundary of Louisiana; buy for two millions of dollars the rest of her possessions east of the Perdido; secure payment for the damages suffered by the condemnation of American shipping by French consuls on Spanish soil; insist on the right of the United States to Texas. On this point Spain might be stubborn. In that event he might waive the whole question of a western boundary and consent to separate the dominions of Spain from the dominions of the United States by a broad belt of neutral country, into which the people of neither power should be suffered to go. The eastern limit of this belt was to be defined as the Sabine, from its mouth to its source; a right line to the junction of the Osage with the Missouri; and a line parallel to the Mississippi to the north boundary. On the west the limit was to be the Rio Colorado to its source; a line to the most southwesterly branch of the Red river; the highlands parting the feeders of the Missouri and the Mississippi from the feeders of the Rio Bravo, as far as the source of the Rio Bravo, and a meridian to the north boundary. On no account was our claim to the Rio Bravo to be given up. On no account was the neutral belt to exist for more than twenty years. If possible, the term was to be less and the belt narrower. Indeed, so strongly did Jefferson feel on this point that, three months later, the instructions were greatly modified. The Commissioners were then instructed to secure the Rio Bravo as the limit of Spanish settlement, and the Rio Colorado as the limit of American settlement; but not to give up the territory between these rivers forever.‡

* Appointed during the recess of the Senate. Confirmed November 15, 1803. Journal of the Executive Proceedings of the Senate.

† Madison to Monroe, April 15, 1804. Foreign Relations, vol. ii, pp. 627–630.

‡ Madison to Monroe and Pinckney, July 8, 1804.

The receipt of this letter and the news of Pinckney's quarrel with Cevallos determined Monroe to set out at once for Madrid. His route lay through Paris, and at Paris he stopped to seek French help. Of the result of such an application he was not long in doubt; indeed, he had not been three days at Paris when he was told plainly that the whole question was one of money. "Spain," said one man, who spoke with authority, "Spain must cede territory. The United States must pay money." Marbois declared that if Spain were suitably compensated the negotiation might succeed. Despite these unmistakable assurances, Monroe determined to try, and spent some weeks in persuading Livingston to carry his note to Talleyrand. In it he again stated the claims of the United States to the Perdido and the Rio Grande, reminded Talleyrand that, at the suggestion of the Emperor, the negotiation for the cession of the Floridas and the payment of damages had been put off, told him that it was now to be begun, and asked for the support of Napoleon. As time was precious, Monroe did not wait for the reply, but passed on to Madrid. The answer, therefore, was addressed to John Armstrong, who had just replaced Robert R. Livingston as Minister to France. The letter was long, but the substance was this: France had ceded to the United States in 1803 what she had received from Spain in 1800, and what she received in 1800 was a retrocession of what she ceded to Spain in 1762, and what she ceded to Spain in 1762 was the territory west of the Mississippi, the Iberville, and Lakes Maurepas and Pontchartrain. Florida she gave to England. How, then, could it be receded to her by Spain?*

A month later Monroe and Pinckney renewed relations with Spain and submitted the project of a convention to Cevallos.† By one article Spain was to acknowledge the Perdido as the eastern boundary of Louisiana. By another, a temporary neutral strip was to be established, into which no settlers from either country were to go. By a third, the final boundary be-

* Talleyrand to John Armstrong, December 21, 1804. Foreign Relations, vol ii, pp. 635, 636.

† Pinckney and Monroe to Cevallos, January 28, 1805. Foreign Relations, vol. ii, pp. 636–639.

tween the countries was to be established before a certain date. By a fourth, commissioners were to be chosen to determine all damages due to either power. The fifth authorized the Commissioners to fix the losses arising from the suspension of the right of deposit at New Orleans in 1802. The sixth specified the manner in which the awards should be paid.

The project of a convention, Cevallos said in his reply, ought to result from the discussion of the points in dispute. He proceeded, therefore, to lay aside the project and take up the discussion under three heads—the damages, the indemnity for injuries caused by suspending the right of deposit, and the boundary of Louisiana. Unable to agree on the question of indemnity, they passed to the discussion of the eastern boundary, and a whole month was spent in idle dispute. Again no agreement was reached, and the eastern boundary was dropped and the western taken up. Cevallos offered to fix a point on the shore of the Gulf between the rivers Calcasieu and Marnentou and draw a line northward between the Spanish post of Neustra Señora de los Adaes and the French post of Natchitoches on the Red river; where the line should then run he proposed to leave to a commission.* The envoys answered that the United States claimed to the Rio Bravo, but would, on two conditions, accept the Colorado. If Spain would pay the claims provided for in the convention of 1802 and cede the two Floridas, the United States would waive all other claims for damages and make the boundary a neutral belt thirty miles wide on one or both sides of a line to be the Colorado to its source, a line to the most southwesterly source of the Red river, thence along the highlands parting the waters of the Mississippi and the Missouri from the waters of the Rio Bravo, and a meridian to the north boundary of Louisiana.† Cevallos declared the terms unreasonable. The correspondence ended, Monroe asked for his passport, and a week later was on his way back to London. There was, he declared, no other alternative. He must depart or submit to terms which it was well known France would accept, nay, had perhaps dictated.

* Cevallos to Pinckney and Monroe, April 13, 1805.

† Pinckney and Monroe to Cevallos, May 12, 1805. Foreign Relations, vol. ii, p. 665.

These terms were: make a loan of seventy millions of livres, give it to Spain, and, when Spain had transferred it to France, receive from Spain the disputed territory and the money by instalment in seven years.* Pinckney lingered some months longer, for every mule was seized for the use of the King, and he could not get to the Sitio to take leave. James Bowdoin, of Massachusetts, was in the mean time appointed to take Pinckney's place.†

* Monroe's Diary at Aranjuez, April 22, 1805. Manuscripts State Department.

† Nominated November 19, 1804. November 20, 1804, the Senate consented. Executive Journal, vol. i, pp. 473, 474.

CHAPTER XV.

RESULTS OF THE PURCHASE OF LOUISIANA.

While the purchase of Louisiana was thus involving us in a boundary dispute abroad, it was producing consequences far more serious and alarming at home. It set up the principle that Congress may violate the Constitution if the mass of the voters approve. It destroyed what was then called the balance of power between the North and the South. It stirred up the Federal press of New England to clamor for a separation of the States, and encouraged the Federal leaders in Congress deliberately to plan disunion. The vast extent of the Southern States, the richness of their soil, the mildness of their climate, the ruling place they held in politics, led to the belief that they would in no long time outstrip the North. The purchase of Louisiana was, therefore, to thousands of well-meaning men a matter of the gravest concern. They were sure that the power, the influence, the prosperity of New England were gone forever. When the Constitution was framed, these men would argue, a balance of power among the original parties was considered to exist. For a while this balance was carefully maintained, and the admission of Kentucky, a Western State, was attended by the admission of Vermont, an Eastern State. But the entrance of Tennessee into the Union was by no means offset by the entrance of Ohio. The balance of power was then destroyed, and what was then begun has, by the purchase of Louisiana, been assured a steady continuance. Out of that territory will be made new States. These new States the South will use to govern the East till the Western States, increasing in number and growing in population, themselves combine and rule both the South and the

East. Under either set of rulers New England is doomed. Shall she then submit to the guidance and tyranny of the South? The recent augmentation of Southern interests must convince every State above the Chesapeake and Potomac that safety is to be found nowhere but in separation.

The prosperity of New England, in the opinion of these men, demanded separation. Virginia influence, Virginia politics, Virginia men ruled everywhere. The influence of New England in the affairs of the nation seemed gone forever. She was, they thought, fast becoming no better than a Virginia colony. From such a fate she must, at all hazards, be saved. The idea of separation was an old one. That men living under such varieties of climate, eating such different kinds of food, believing such different creeds, and following such different occupations, could long be held in union, was never generally believed till after the second war with England. Long before the Constitution was framed, the secession of the country beyond the mountains and the formation of a Western Republic in the valley of the Mississippi was the dream of such scheming politicians as Wilkinson, and the ever-present dread of such earnest patriots as Washington. Long after the Constitution was adopted, in the stormy days of the Alien and Sedition laws and the contested election of 1801, separation was again discussed openly. "The Potomac the Boundary, the Negro States by themselves," became a toast in more than one goodly company, and was boldly hung up in the Merchants' Coffee-House at Philadelphia. In the Connecticut Courant long disunion essays appeared over the signatures of Pelham, Gustavus, and Raleigh. The Hudson or the Delaware ought, in the opinion of these writers, to be the boundary of a Northern Confederacy. But by the great body of New England men this suggestion was never heeded. Their bodily comforts were in no way touched by the acts of Congress. They paid no stamp taxes, no direct taxes, no excise taxes. Their crops were as plentiful, their voyages were as successful, their catches were as large under Jefferson as they had been under Washington or Adams. Money had never been so abundant. Labor had never been so well repaid. The whole community was growing richer, more pros-

perous, more happy every day. Such men were in the very worst condition to be aroused to rebellion. The most the arts of politicians could persuade their representatives to do was to ask for an amendment to the Constitution of the United States.*

The State to propose this amendment was Massachusetts. There the people were firmly convinced that the Commonwealth was in great danger; that a crisis was at hand; that her sovereignty, her independence were fast being taken away; that she was already a cipher in the national councils; that the South, united in a common policy and ruled by the influence of Virginia, governed the country, and that this power of the South over the North was due to the system of slave representation. The whole number of slaves in the South at this moment, they would argue, is eight hundred and forty-eight thousand. Three fifths of these are represented, and three fifths divided by the ratio of representation† gives fifteen. There are in the House of Representatives, therefore, fifteen negro representatives. This number is greater by one than the whole number to which New Hampshire, Connecticut, and Rhode Island are entitled; is less by two than the number of representatives of Massachusetts; has repeatedly been found sufficient to secure legislation hurtful to New England and, at the election of 1801, determined the choice of a President. The South, having secured these advantages in the House, is now about to secure like control over the Senate. An enormous territory had been purchased in the West to be cut up into new slave States, with two votes each in the Senate. What then will become of the interests of New England? What will become of her commerce, of her manufactures, of her fisheries, of that liberty and independence for which she began the revolution of 1776? They will be wholly at the mercy of men whose seats in the House and in the Senate are due to importations from the coast of Guinea. To prevent this evil may perhaps be impossible; but to retard its approach is easy. Let the Constitution be amended.

* A collection of the sentiments of public men on secession between 1790 and 1804 may be found in the Life of William Plumer. By William Plumer, pp. 277–284.

† 1 : 33,000.

Let that provision which gives to twenty thousand owners of fifty thousand slaves the same voice in an election as fifty thousand free men be stricken out. Let there be one rule for North and South, and let that rule be "representation according to free population." The demand was heard, and in June a motion calling for an amendment to the Constitution of the United States was laid before the General Court. The preamble of the motion set forth that the representation of slaves was a concession of the East to the South; that it was unjust and hurtful at the very start; that the injury had since been increased by the multiplication of slaves and by the purchase of Louisiana; that the union of the States could not exist on principles of inequality; and that, in order to preserve the Union, the Constitution ought to be so amended that representation and direct taxes should be apportioned among the States according to free population.*

The resistance of the Republicans to its passage was little more than form. They declared it to be unnecessary; assured the Federalists that thirteen States would never approve; pronounced it the work of alarmists, of men determined to break up the Union; reminded the Legislature that breaking up the Union meant dividing the national debt; that when the debt was divided each section would become responsible for so much as was owned by its citizens; that south of Pennsylvania there were not fourteen hundred holders of Government stock; that east of Pennsylvania there were eight thousand, and these would have to be paid by taxes and excises laid on the farmers, the merchants, and the commercial men of New England.† Nevertheless, the Ely amendment, as it was called, passed, and in December was laid before the Senate of the United States by Timothy Pickering, and speedily forgotten.

As is customary in such cases, copies of the Massachusetts resolutions were sent to each of the States. Two postponed consideration.‡ From each of the others came an answer, and the answer in each case was No. Virginia declared that the article to be amended was one of the compromises in the Consti-

* Democrat, June 16, 1804. A Defence of the Legislature of Massachusetts, or the Rights of New England Vindicated. Boston, 1804.

† Democrat, August 18, 1804.

‡ Connecticut and Delaware.

tution; was therefore fundamental and ought to be among the last to be changed, lest change should destroy reliance on that good faith which is the cement of the Union and the guarantee of the political fabric on which the Union rests.* To alter the system of apportioning representation and direct taxes would, Maryland declared, loosen the ties by which the States are happily confederated, scatter seeds of disunion, and produce anarchy—a state of things from which every reflecting mind must turn with terror and abhorrence.† South Carolina pronounced it incompatible with the rights and interests of the State, and an innovation on the system of reciprocal conciliation established by the Constitution.‡ Ohio resolved that the amendment was inexpedient, would excite State jealousies, destroy that confidence and good understanding which then prevailed, and endanger the Union.# The answer of Pennsylvania was long and exhaustive. The statements of Massachusetts, that the rule for the apportionment of representation was unjust at the start; that it had been made more so by the increase of slaves and the purchase of Louisiana; and that the amendment was necessary to preserve the harmony and union of the States, were examined one by one, and the opinion expressed that to alter the Constitution as Massachusetts wished would hasten rather than hinder the evils it was intended to prevent.‖ Kentucky laid down four propositions which she held ought not to be disputed:△ In a confederation of States the principles by which they shall be governed are a subject of agreement between the contracting parties; that the Constitution of the United States was such an agreement; that some of the provisions of the Constitution, being adapted to the peculiar situation of some of the States, were conditions without which those States would not have entered the Union; that the mode of representation was such a condition to which the slave-holding States agreed in full confidence that it was just and not oppressive. She believed, therefore, that a change might be followed by the disruption of the Union. From Vermont, from Rhode Island, from New Hampshire

* Aurora, January 3, 1805.
† Aurora, January 17, 1805.
‡ Aurora, January 21, 1805.
# Aurora, February 20, 1805.
‖ Aurora, January 7, 1805.
△ Democrat, February 13, 1805.

and New York, New Jersey and North Carolina, from Georgia and Tennessee, came back answers of a similar kind. Never before nor since did an amendment offered by any State receive a more crushing condemnation. As reply after reply was issued, the joy of the Republicans rose high. The end and aim, they said, was plain from the start. It never was designed to be attached to the Constitution. It was sent forth to gather public opinion on the fitness of dividing the Union, and it was with unfeigned joy that they saw it receive the approbation of no second State.

When the Republicans told their Federal associates in the Massachusetts General Court that the Ely amendment was the work of men ready to break up the Union, they spoke more truly than they knew. For months past the leaders of the New England Federalists had been seriously planning and discussing secession. In this, such of them as had seats in Congress were especially busy. Indeed, the very fact that they were in Congress made them rebellious. Reduced to a minority by the election of Jefferson, they had been compelled to sit month after month as the idle beholders of the destruction of what they were pleased to call the Federal edifice. They had seen the navy ruined, the army reduced to a handful, the whole system of Federal taxation swept away, the judiciary act repealed, and judges, duly appointed and duly commissioned by Adams, denied the right of serving. They had seen Louisiana purchased, and the twelfth amendment to the Constitution sent out to the States. Against all this their protests, their speeches, their votes availed nothing. Galled past all bearing by unending defeat, they had now reached a pass when they could see nothing good in any act of the Republican majority. The proposed amendment to the Constitution was for the sole purpose of making Mr. Jefferson President a second time. Louisiana had been bought to keep the Virginians in power, and enable them to ruin New England. To keep the Virginians in power the Senate and House must be Republican. To insure the Senate being always Republican, there must be more slave States. An immense wilderness had therefore been purchased, and was already being cut up into embryo slave States. To keep the House Republican, there

must be more slave representatives. To get these there must be more slaves, and to get more slaves South Carolina had repealed her law, had opened the port of Charleston to the slave trade, and in a few months a stream of wretched blacks, dragged from the coast of Guinea and the marts of the Spanish Indies, would be hurrying over the mountains into the new domain.

Federalists out of Congress might be content to grumble and to write; those in Congress, driven to despair by the hopeless struggle with the majority, were disposed to act, and to act vigorously. Chief among them was Timothy Pickering, and with him in this way of thinking were Roger Griswold, Uriah Tracy, William Plumer, and, in time, Aaron Burr.

The wildness of the plan arranged by these men is of itself conclusive proof of the depth of their despair and the intemperance of their political zeal. Nothing seemed to them easier than to set up their Confederacy. Men favorable to secession had but to get together in some New England State and choose a General Court and Governor pledged to support disunion. The General Court must then repeal the law authorizing the election of members of Congress, set up custom-houses and post-offices, and, when the time came, refuse to elect United States Senators. Could Massachusetts be persuaded to lead the way, Connecticut and New Hampshire would follow, and Rhode Island come in of necessity. To secure New York would be more difficult, but even of her they did not lose hope. Indeed, so great was their infatuation that they fully expected to be joined by New Jersey and by Pennsylvania east of the Susquehanna, and by the British provinces of Nova Scotia and New Brunswick. The plan formed, their next step was to make it known to their constituents, and letters were soon despatched to the Federal leaders in Connecticut and Massachusetts. Not one of them sent back an encouraging reply. Each admitted that a crisis was near. Each admitted that a separation was greatly to be desired; but each insisted that such a step at such a time could only end in failure. The people were not ready for it. They must wait till something happened; till a war had been provoked by Great Britain or France; till the proposed amend-

ment had been rejected by New England and accepted elsewhere; till some measure, severely felt and clearly chargeable to the misconduct of the South, had roused and united the people of New England against the Administration.

To this advice the plotters turned a deaf ear. They would not be convinced, for, at the very time their friends were urging them to hold back, an event occurred which encouraged them to go forward. Aaron Burr had been nominated for the Governorship of New York. Since the February day, 1801, when he consented to stand as the competitor of Jefferson for the Presidency, Burr had been an outcast from his party. His friends had been proscribed. No patronage had been awarded him, and he had three times been foully lampooned in long and tiresome pamphlets written by James Cheetham. The Albany Register followed the lead of Cheetham. The whole Republican press of New York followed the Register; and Burr, attacked on all sides, began to struggle hard for political existence. His friend, William Peter Van Ness, replied to Cheetham. Burr himself sought aid, first of the President, and then of the Federalists. His interview with Jefferson took place on the twenty-sixth of January, and amounted to a request that, as he must fall from place and power, he might be suffered to fall by easy stages.

He knew, he said, that it would be well for the Republican cause that he should quit politics. A dangerous schism would otherwise take place. But he could not retire while he was the subject of calumnies stirred up by the Clintons and the Livingstons. If he did, they would say he shrank from the public verdict, and this he never would do. All could be prevented if Jefferson would bestow on him some mark of favor, some office that would show to the world that he retired with the undiminished confidence of the President.* The request was refused, and he went away determined to get an office in spite of the rebuff. As it happened, the people of the State of New York were about to elect a Governor, and toward this office he now turned his eyes. In February, accordingly, his friends in the Legislature of New York announced that

* Anas, January 20, 1804. Works, ix, p. 204.

they would on a certain day hold a caucus and nominate him.* Such Federalists as happened to be in Albany instantly called a meeting to discuss what to do. The place was a room in Lewis's Tavern. What there took place it was intended to keep secret. But, hidden away in the room adjoining that in which the meeting was held, were two of the friends of Aaron Burr. By them the proceedings were overheard, repeated, and given to the world through the columns of the Morning Chronicle. The purpose of the caucus was to decide whether the support of the Federal party ought to be given to Aaron Burr or thrown away on a candidate of its own. Many were well disposed toward Burr, but Hamilton was present, read a long paper on the political character of the Vice-President, and persuaded the majority of those who heard him to give their support to Chancellor John Lansing. When Lansing declined, and Morgan Lewis was nominated, Hamilton was greatly displeased. Thenceforth he took but little interest in the election. His followers inclined more and more toward Burr, and for a time it seemed not unlikely that Lewis would fail of election.

True to their promise, the discontented Republicans nominated Burr on the eighteenth of February. Two days later the nomination was ratified by a meeting of his friends in New York city. The resolutions drawn up on that evening set forth that George Clinton had refused a renomination, that it became necessary to find a successor, and that the man most deserving to be his successor was Aaron Burr. His military services during the Revolutionary War, his political talents, his republican integrity, his fixed and well-known principles, marked him out above all others for the place and entitled him to the esteem and support of his fellow-citizens.

By Pickering and his friends the nomination of Burr was hailed with delight. From the very first they wished him well. He alone could, as they expressed it, break the Democratic phalanx, and this once broken, there was a fine chance to secure New York for their Northern Confederacy. To do this, it was merely necessary to bring over the Federalists to

* Albany Register, March 6, 1804.

his support and elect him Governor. Once Governor of New York, he would be set free from Virginia influence. Then would be the time to open their plans to him, offer the leadership of the party, make him chief of the new confederacy, and so add New York, and perhaps New Jersey, to the five New England States.

Encouraged by the prospect, Pickering and Griswold refused to give up their plan. Indeed, Congress no sooner rose than they hastened to New York to canvass openly in Burr's behalf. Long conferences were held with Rufus King, with Hamilton, and on one occasion with Burr. Even at Boston the result of the election was awaited with interest. There on the twenty-seventh of April, four days after the election took place, but before the result was known, a great dinner was given at the Concert Hall to Christopher Gore. In the list of toasts were three which well expressed the sentiments of the company. The first was, "Virginia Dominion—may it be bounded by the Constitution or by the Delaware." Another was, "The Federal virtues are obliged to swarm from the seat of Government —may they find a hive in the North." The last was, "Aaron's Rod—may it blossom in New York, and may Federalists be still and applaud while the great serpent swallows up the less."

In New York the campaign was marked by savageness, by vindictiveness, by scurrility, and by blood. Never had party spirit run higher. Old friends ceased to speak. Partners quarrelled, social intercourse was broken off, and business was seriously interrupted. When at last the election was over, Burr was defeated. In the South the news was welcomed with delight. There is, it was said, a deep-laid scheme to part the union of these States. Had Burr succeeded to the governorship of New York, the scheme would have gone on. The whole aristocracy of the Eastern States is at the bottom of it, and there are active partisans even in New Jersey. Indeed, the Delaware was to have been the dividing line. The new government was to have been aristocratic in form, and, when well under way, was to have sent agents to stir up the negroes in the South, and was to have called on England to

seize Louisiana.* To the New England leaders the defeat was most disappointing. But a blow heavier still was soon to follow. By Burr and "the little band" the success of Lewis was ascribed to one cause—the never-ending meddling of Hamilton. The paper which he read to the caucus at Albany, the conversations held with the leaders in private, the influence he exercised at New York, had been the cause of it all. Once again had Hamilton stood in the way. But he had done so for the last time, for Burr deliberately and in cold blood now determined to kill him. Some pretext for a duel was necessary, and this pretext Burr found in a couple of letters which, during the campaign, had appeared in the Albany Register and, as handbills, had been sent through the mails into every county in the State.

The first was written by Charles D. Cooper, was addressed to Andrew Brown, of Bern, not far from Albany, and contained the substance of a conversation overheard at a dinner. Dining one day in February with Judge Taylor, Cooper met Hamilton, who, in the course of conversation, said that Mr. Burr was a dangerous man and ought not to be trusted with the reins of Government. The letter was written for political effect, was printed, and promptly answered by Philip Schuyler. He assured the chairman of the Republican Committee at Albany that Judge Kent and the Patroon were supporters of Lewis, and that General Hamilton was taking no part whatever in the contest. This, with much more, was put in the form of a handbill by the Republican Committee and scattered over the State. As soon as he saw it Cooper replied, and in the reply asserted that he could mention a still more despicable opinion General Hamilton held of Burr. The next day the whole correspondence was made public in the Albany Register.†

In these two letters of Cooper was found the excuse that Burr sought. He carefully cut them from a newspaper, enclosed them in a written demand for a prompt denial, and on June eighteenth sent the demand by the hands of William P. Van Ness to Hamilton. Then began that long and curious

* Republican Advertiser (Fredericktown, Maryland), May 25, 1804.

† Albany Register, April 24, 1804.

correspondence which ended June twenty-seventh in a formal challenge from Burr. The challenge was accepted, and in the early sunlight of a July morning the two were rowed across the Hudson River and met under the rocky heights of Weehawken. Hamilton is said to have fired in the air. Burr, who is charged by his enemies with taking a deliberate and steady aim, shot Hamilton through the body and he fell face forward on the ground. The wound was mortal, and, after lingering in great pain for thirty-one hours, he died on the afternoon of Thursday the twelfth of July.

News of the duel reached New York by nine o'clock on the morning of the shooting. A notice was at once put up in the great room of the Tontine Coffee-House, and was followed by others every few hours. When death was announced, the merchants met, urged the citizens to stop all business, close their shops, put their flags at half-mast, and attend the funeral in a body. The Common Council suspended the ordinance against the tolling of bells. Every society, every association, St. Andrew, Tammany, the Marines, the Mechanics, hastened to draw up resolutions of condolence. Never, it was said, had the city been wrapped in such gloom. On the day of the funeral every church bell was muffled and tolled from six to seven in the morning and from seven to eight in the evening. In the procession were the clergy of all denominations, the gentlemen of the bar in deep mourning, the Lieutenant-Governor, the Corporation of the city, the resident agents of foreign powers, the militia, the merchants, the Chamber of Commerce, the masters of vessels in the port, the societies, the faculty and students of Columbia College, and a great host of citizens, conspicuous among whom were the friends of Burr. Along the line of march the sidewalks, the stoops, the trees, the windows, the housetops were black with mourning people. Thousands, it was said, were forced to climb into the trees or go upon the housetops to get a view. As the procession went slowly through the streets to Trinity Church, minute-guns were fired from the Battery, and were answered by the English war ship Boston and the French frigates Cybèle and Didon. During six weeks, what were called tributes of respect continued to be paid to the memory of Hamilton in Boston, in

Poughkeepsie, in Trenton, in Philadelphia, and in great numbers of towns of lesser note. Hardly a Federalist the land over but for thirty days wore a band on his hat or crape on his arm.

Burr meantime dared not appear in public. For ten days he kept close to his house and grounds at Richmond Hill and anxiously awaited the verdict of the coroner's jury. At last, on the evening of the twenty-first, with his friend Swartwout he stole away, entered a barge provided for the purpose, and was rowed all night long down the river and bay to Perth Amboy. Early on the twenty-second he landed at the home of Commodore Truxton, was kindly received, and spent the day, which was Sunday. Next morning he was driven over to Cranberry, whence he went by unfrequented roads and private wagons to Philadelphia. There he boldly showed himself, was often seen on the streets, and was much in the company of the English Minister. Yet even at Philadelphia he did not feel safe. On the second of August the coroner's jury at New York found him guilty of murder. The Grand Jury told the District Attorney to prosecute him, and Burr, fearing that a requisition would be made on the Governor of Pennsylvania for his arrest, determined to flee once more. Before setting out, however, he took the next step in that career of treason which links his name with the name of Arnold, and consigns it to everlasting infamy.

It was then the custom for foreign Ministers, the moment Congress adjourned, to quit the heat and desolation of Washington and seek for social pleasures in some Eastern city. For this purpose no city was such a favorite as Philadelphia, and there, in the summer of 1804, Anthony Merry was passing the time. Burr was no stranger to Merry; yet, in the business he now had in hand, the Vice-President thought it prudent to employ a go-between, and selected as such Colonel Charles Williamson. Just what took place cannot be known; but it is certain, from the letter Merry wrote Lord Harrowby, that Burr, through Williamson, applied for English help to break up the Union. Merry, smarting under the rude treatment, or, as Jefferson considered it, the republican treatment he had received at Washington, readily fell in with the plan,

and Williamson was soon on his way to London with letters of introduction.* This done, Burr and his friend Swartwout boarded a vessel and put out to sea. They had, it was said, gone to Spanish America. But they really went to the Island of St. Simon, in Georgia, whence in time Burr passed across the State, visited his daughter Theodosia in South Carolina, and was back in Washington just before Congress met.

All hope of a Northern Confederacy, with himself for the chief, was now abandoned. But his scheme for a great confederacy in the valley of the Mississippi, the scheme he had in August so carefully unfolded to Merry, became, on that account, all the more attractive. Indeed, it may well be doubted if, through all that long winter, it was ever for a day absent from his thoughts. As first steps to its accomplishment, however, three things seemed necessary. He must identify himself closely with Western men; he must remain in political life; and he must, if possible, become the representative of the political life of the West. How these steps were to be taken was hard to know; but the way was soon made clear by James Wilkinson, his old friend, his fellow conspirator, and at that time commander of the thirty-five hundred men who made up the army of the United States. By him one Western man after another, John Fowler, who sat for a district of Kentucky; Matthew Lyon, another representative from that State; Peter Derbigny, one of the three delegates sent by the discontented Creoles of Louisiana, was brought up and introduced to Burr. On them were lavished all those winning graces for which he was so renowned, and by means of the advice and information they furnished a plan was soon arranged. Burr, it was decided, should quit the East; should live henceforth in the West; should there begin

* "I have just received an offer from Mr. Burr, the actual Vice-President of the United States [which situation he is about to resign], to lend his assistance to his Majesty's Government in any manner in which they may think fit to employ him, particularly in endeavoring to effect a separation of the western part of the United States from that which lies between the Atlantic and the mountains, in its whole extent. His proposition on this and other subjects will be fully detailed to your Lordship by Colonel Williamson, who has been the bearer of them to me, and who will embark for England in a few days."—Merry to Lord Harrowby, August 6, 1804. Adams's History of the United States, vol. ii, p. 395.

anew that splendid political career so suddenly ended in the East, and should take his seat in the House of Representatives as Congressman from some Western State. Lyon suggested Tennessee, as in that State residence was not required. Some one, perhaps Derbigny, suggested that he become a delegate from the new government about to be organized in the territory of Orleans. With this plan Burr pretended to be greatly taken, and lost no time in preparing for a journey to New Orleans. That his desire to remain in public life was to hide a design to split the Union was no secret. Derbigny had betrayed it to Louis Marie Turreau. Turreau represented the French Empire at Washington, and by him, a few days after Congress rose, the whole plan was made known to Talleyrand.* Anthony Merry, who represented England, knew it already. Indeed, before Burr set out the two had a long and deliberate conference. Merry was assured that the people of Louisiana were determined to become independent of the United States; that nothing deterred them but the lack of help from some foreign power, and the lack of union with the people of the Mississippi valley. This union Burr declared he was determined to effect. Would Great Britain give the foreign aid? Would she furnish a fleet to block the Mississippi, and loan half a million dollars to arm the fighting men?† Again the English Minister hastened to send off a despatch, and, though deeply disappointed that nothing had been heard from Williamson, Burr departed. From Washington he crossed the mountains to Pittsburg, and floated down the Ohio to Cincinnati. As he drifted slowly past the snags and sawyers he came, some two miles below Parkersburg, in sight of the island home of the most famous and the most unfortunate of his many victims.

Herman, or, as he wrote the name, Harman Blennerhasset was born of Irish parents in Hampshire, England, in 1764. As a younger son, he was early destined for the bar, was educated at Westminster School, was graduated from Trinity College, Dublin, and entered as an apprentice at the King's

* Turreau to Talleyrand, 9 mars, 1805. Adams's History of the United States, vol. ii, p. 406.

† Merry to Harrowby, March 29, 1805.

Inns. There, in 1790, he was admitted to practice as a barrister. His elder brother meantime had died, and, having succeeded to the family estates, he abandoned all thought of practice and began to travel. He visited France, came back to Ireland, and, for reasons which can not be known, made ready to emigrate to America. Having sold his estate and married a wife, he set sail in 1796, with a library and a collection of what was called philosophical apparatus, for New York. Settlers were then pouring into Kentucky and the newly made State of Tennessee, and Blennerhasset, excited by the accounts he heard, started westward to explore the country. His route took him to Pittsburg, and down the Ohio to Marietta. Delighted beyond measure by the scenery, he determined to go no farther; passed some time in looking about for a spot on which to settle, and ended by buying an island in the Ohio, near the mouth of the Little Kanawha, and was soon wasting his fortune in laying out such a lawn and putting up such a house as could not be seen anywhere else in the Western country. On this island Burr and his companion now landed. As they sauntered about, examining the lawn, the shrubs, the greenhouses, a messenger from Mrs. Blennerhasset bade them welcome at the house. At first they declined. But when the lady heard that one of the strangers was the late Vice-President, she again sent and invited them to dinner. This courtesy was accepted, and at dinner began that acquaintance of which in time Burr made so much.

From the island he went on to Cincinnati, turned southward, and stopped a few days at Frankfort, Kentucky. The purpose of this stop was to hide his real designs and keep up a pretence of desire for office; for he there applied to John Brown, a Kentucky Senator, for letters to aid his election in Tennessee.* Passing on from Frankfort, he entered Nashville late in May. A travelling showman had lately passed that way, arousing the curiosity of the people by exhibiting a wax figure of Burr as he appeared when he slew the leviathan of Federalism under the heights of Weehawken.† His journey, therefore, was a continuous ovation. At Nashville the whole town

* Wilkinson's testimony. Trial of Aaron Burr, vol. iii, p. 361.

† Scioto Gazette, October 9, 1806.

turned out to receive him. His stay of a week was one round of dinners, receptions, teas. But what pleased him most was the ardent admiration of Andrew Jackson, who at the close of his visit sent him down the Cumberland in a fine barge. On the north bank of the Ohio, not far from its mouth, there stood the military post of Fort Massac, and there, in company with Wilkinson, Burr spent four days. June tenth, provided with letters of introduction, a sergeant, and an escort of ten men, he once more set off, with sails spread and colors streaming, for New Orleans.

There he was in his element. Every man he met seemed to be a malcontent. The lingering of the Spanish officers so long after they should have gone about their business had convinced some that Spain would never consent to the sale of Louisiana, and that the day was near when the Spanish flag would once more be seen flying over the Place d'Armes. The suppression of smuggling and the slave trade had enraged still others, and Burr heard the Governor and the Government denounced on every hand: "Quel commandant! Quel Gouverneur! Quel bête!" was often muttered after him as he rode along the street or made his way through the crowd in a ball-room. It was not possible to be long in any company without hearing how shameful it was to part the territory; how tyrannical to substitute the English for the French tongue; how impossible to get justice in a court where an American sat on the bench and an American stood at the bar; how this man had been deprived of a Spanish land grant, and how all men were being forced to submit their land titles to official inspection. Nor were they always content to mutter. More than once the bayonet was used to put down disorder at public balls; more than once the Sheriff made his arrests with the aid of United States troops. The city seemed full of revolutionary schemes and of adventurers ready to carry them out. There was talk of conquest beyond the Sabine and the Red; there was talk of driving the Spaniards from Texas; nay, there was a body of three hundred men solemnly pledged to free Mexico from Spanish rule.* To these men Burr seems

* Wilkinson's Memoirs, vol. ii, p. 383.

to have opened his heart, and to have persuaded them to join his plan for the dismemberment of the Union, to their plan for the conquest of Mexico. In a little while, therefore, alarming rumors were flying about, and men were repeating from mouth to mouth that a great revolution was at hand, that the flag of Spain would soon disappear from the shores of the Gulf, and that the States and Territories along the valleys of the Ohio and the Mississippi, with part of Georgia and Carolina, were to be bribed with the plunder of the conquered colonies of Spain, to separate from the Union.*

After spending two weeks most agreeably at New Orleans, Burr turned northward, and in September was with Wilkinson at St. Louis. The purpose of his journey was now accomplished. He had seen the Western country; he had talked with Western men. He was satisfied that they were ready for revolt; and, full of hopes for the success of his scheme, he had come to report the good news to Wilkinson. But he found the General greatly cooled. From Fort Massac Wilkinson had gone back to St. Louis in high spirits. That he was then deep in a plot to form a new empire in the valley of the Mississippi and drive the Spaniards from Mexico, there cannot be a doubt. Letters which he wrote, letters which he received, his whole conduct betray him. As one step, he despatched Zebulon Pike, apparently to explore a route to the sources of the Arkansas and the Red, but really to Mexico. As another, he began to sound his officers one by one. He told them that a change had come over the politics of the country; that the purpose of the Democrats was to produce a state of anarchy and confusion; that they were about to seize on the property of the Federalists and divide it among themselves; hinted that a military empire was soon to be set up in Louisiana, and declared that a grand scheme was on foot that would not only make his fortune but the fortunes of all who went with him. Receiving no encouragement from his officers, Wilkinson grew despondent, and in this frame of mind Burr found him in September. Nothing could rouse him. On one day Burr denounced the Government as imbecile, as

* Daniel Clark to James Wilkinson, September 7, 1805. Wilkinson's Memoirs, vol. ii; Appendix, xxxiii.

mouldering to pieces, and asserted that the Western people were ripe for revolt. "My friend," said Wilkinson, "if you have not profited more by your journey in other respects than in this, you would better have stayed in Washington. Surely no person was ever more mistaken. The Western people disaffected to the Government! They are bigoted to Jefferson and Democracy." On another day Burr sought by depreciation, by sneers, to disgust Wilkinson with his present employment. Why was he content to vegetate in such a wretched government as that of Louisiana? Was his energy gone? Was his activity dead? Should a great enterprise, leading to fame and fortune, be undertaken, would he join it? But Wilkinson would not respond, and Burr was forced to be content, as the result of his visit, with a letter to William Henry Harrison. Still keeping up the pretence of a desire for public office as an excuse for his seemingly aimless wanderings over the West, Burr presented the letter, for it asked Harrison to have him returned as Territorial delegate from Indiana. The thing was not possible, and Burr came back to Philadelphia. There he learned that much of his scheme was public property. Toward the close of July a series of queries, having no signature, appeared in the columns of the United States Gazette, a Federal newspaper printed at Philadelphia. How long, it was asked, how long will it be before we shall hear of Colonel Burr at the head of a revolutionary party on the Western waters? Can it be true that he has formed a plan to entice the adventurous youth from the Atlantic States to Louisiana? Is one inducement the immediate call of a convention of delegates from the States bordering on the Ohio and the Mississippi to form a separate government? Is another inducement the assurance that all the Congress lands, save such as were reserved for the warlike followers of Burr, would be seized and divided among those States? How long will it be before all the forts, all the magazines, all the military posts at New Orleans and on the Mississippi, will be in the hands of Burr? How soon will he undertake the conquest of Mexico with the aid of British ships and troops? What difficulty can there be in finishing a revolution in one summer when the revolting States will gain all the Congress lands, will get

rid of the public debt, will enjoy their own commercial revenues, and share with England the plunder of Spain?

A few days later the Aurora answered these queries; declared that none of the things there hinted at could ever take place, and were fit only to be attempted by a man in as desperate straits and of as desperate a character as Aaron Burr. To Merry, however, the questions had a very different meaning. He read them with horror and at once wrote Lord Mulgrave that Burr had been babbling, or had been betrayed, or that matters had gone so far that secrecy could not longer be maintained.* When, therefore, four months later, Burr reached Washington and hurried to the British Legation, he found the Minister quite as anxious to see him as he was to see Merry. He went fully expecting that some answer would by that time have come from London. None had, and for this, in the long interview which followed, he expressed the deepest disappointment and concern. He told Merry that everything was ready for the execution of his plan. That, relying on help from England, he had promised his friends to return to New Orleans in March; that the revolution was to commence at the end of April or the beginning of May, provided His Majesty would send the one hundred and ten thousand pounds and two or three frigates, two or three ships of the line, and a fleet of small vessels to cruise off the Mississippi till wanted.† All over the West, he declared, men of influence and property were ready to contribute. At New Orleans the people were so impatient of American rule that he found them on the point of sending deputies to Paris with a long list of grievances. Could he but obtain the needed money so as to set out by the beginning of March, the revolution at New Orleans could be accomplished without shedding a drop of blood.

Merry could give him no hope, and a few days later he returned to Philadelphia. Burr must now have been at his wits' end, for no sane man would for a moment have thought seriously of the plan which to him seemed good, and to which for months to come he bent all his energies. Money, it was clear,

* Merry to Mulgrave, August 4, 1805. Adams's History of the United States, vol. iii, p. 226.

† Merry to Mulgrave, November 25, 1805.

was not to be had from England for the purpose of breaking up the Union and plundering Spain. He had the front, therefore, to seek money for that purpose from Spain herself. To make the request in person would never do; so he chose for his agent a man who richly deserves to bear a part, and a large part, of the infamy with which this conspiracy has loaded the memory of Burr—Jonathan Dayton—and despatched him on an errand of great secrecy to the Marquis of Casa Yrujo. Received by the Marquis, he at once assumed the part of traitor, and, in the language of the class of men to which he pretended to belong, began to "peach." He assured Yrujo that there was in existence a secret for which Spain would do well to pay forty thousand dollars. This secret was known to but three men—Aaron Burr, the English Minister, and himself. He then went on to narrate just enough of the secret to enable Yrujo to see all. He told the Minister of Burr's conferences with Merry; of the plan to split the Union, to form a new republic in the Mississippi valley, and to admit the Floridas; of the application to England for help; of Burr's journey to New Orleans; of the new plan there formed for an expedition against Mexico; and of the warm interest taken by the English Cabinet in the scheme. But Yrujo was not deceived. He well knew that had England really countenanced the plot, Dayton would not be there to tell him; indeed, in later interviews Dayton owned this to be so, and unfolded a second plan wilder than the first. Armed men were to be brought to Washington one by one till, enough being there, they should, on a word from Burr, seize the President, the Vice-President, and the President *pro tempore* of the Senate, seize the public money in the banks, seize the arsenal, seize the navy yard, and, when unable longer to remain in Washington, sail in the captured naval vessels for New Orleans. Strange as it may seem, Yrujo believed this plan could easily be carried out. If Yrujo thought so, no one need wonder that the conspirators were carried away by it.

Returning to Washington, Burr passed the whole winter in seeking money and hunting for recruits. Every adventurer, every man of means, every officer with a grievance who drifted into Washington, was sought out, sounded, and, if he seemed

to respond, informed of the plot. Then was it that he tempted Commodore Truxton. Then was it that he approached General Eaton and disclosed to him the whole plan. Then was it that he wrote to Blennerhasset asking aid. By Truxton he was coldly repulsed. By Eaton he was betrayed to Jefferson.

While he thus failed to gain new allies he began to lose old ones. In June, Anthony Merry was informed that the King had been pleased to grant his request to be recalled, and would send out David Montague Erskine in his stead. The surprise of Merry must have been great, for he had not asked to be recalled. In July, Yrujo was flatly told that the King, his master, would give no countenance to the schemes of Burr. In July, Burr despatched that lying letter to Wilkinson, which a few months later Wilkinson used to establish the treasonable character of the plot. In August, confident that nothing more could be done at Washington, the conspirators set off for the West to put the revolution in motion. First went Peter V. Ogden, a nephew of Dayton, and Samuel Swartwout, a brother of Robert Swartwout, charged with letters to Wilkinson and John Adair. Next went Julius Erich Bollmann, charged with despatches to be carried to New Orleans by sea. Then went Burr, and with him his daughter, Theodosia Alston, and a French officer named De Pestre.

From Pittsburg Burr turned aside, and spent a night at Cannonsburg with Colonel George Morgan. Conversation turning on the Western country, Colonel Morgan remarked that he could remember the time when there was not a family between the Alleghany river and the Ohio, but now the country was filling up so fast that some day Congress would sit at Pittsburg. "No," said Burr, "never, for in less than five years you will be totally divided from the Atlantic States." He then went on to give reasons why this would happen, and why it ought to happen; dwelt on the tributary condition of the West to the East, on the expenditure in the East of the proceeds of land sold in the West, on the high taxes, and on the weakness and imbecility of the Federal Government. With two hundred men he could, he said, drive Congress into the Potomac, with the President at its head. Before leaving on

the morrow he had a long talk with one of the sons, and sought to persuade the lad to go West with him. Alarmed at his language and actions, Colonel Morgan repeated what had been said to the Judges of the district. All agreed to send word to Jefferson, and did so.

From Pittsburg Burr and his party pushed on to Blennerhasset's Island. There the blandishments of Burr and the youth and beauty of Theodosia completed the conquest already half begun, and made the Blennerhassets the most devoted of all his adherents. In his moments of enthusiasm the excitable and volatile Irishman saw the Federal Government fall to pieces; saw a new republic spring up in Louisiana, with Burr for its ruler, with England for its protector, with Wilkinson for its general, with himself for its minister to England, and Erich Bollmann his secretary of legation. He saw Wilkinson lead a splendid army into Mexico. He saw the authority of Spain destroyed. He saw a new throne set up, and on that throne the house of Burr firmly established. Such visions turned his head. His wits left him, and his lands, his fortune, his life, everything that was his, was laid at the feet of Burr. He gave money, he bought supplies, he built boats, he wrote in behalf of the cause.

On July fourth, 1806, there was issued at the town of Frankfort, Kentucky, the first number of a newspaper named the Western World. The chief owner was Joseph Hamilton Daveiss, the United States District Attorney. The chief editor was John Wood, the hack writer and newspaper editor, and the chief purpose of the Western World was to drag to light the men who had been concerned with Mirò in the Spanish conspiracy of 1787. The journey of Burr through the Western country in the summer of 1805; his trip to New Orleans; the discontent of the Creoles; the lingering of the Spanish officials in Louisiana; the visits of Burr to Wilkinson, convinced Daveiss that the old plot to separate the West and put it under the protection of Spain was still being cherished. Thinking so, and seeing in its exposure a fine chance to destroy his political enemies, he wrote to Jefferson in January, 1806, gave a long account of the old plot, declared it was not abandoned, and accused Wilkinson of being in Spanish

pay.* Yet another month and he wrote again, this time accusing both Wilkinson and Burr.† Jefferson bade him tell all he knew,‡ and letter followed letter till, wearied with the apathy of the President, Daveiss took matters into his own hands, founded the newspaper, and began an open attack on the conspirators. His aim was to show that the Kentucky Spanish association of 1787, the conspiracy of Senator Blount, the expedition of Miranda, and the scheme then brewing in the West, were all but so many different forms of the old plot. These charges, and the letters and documents with which they were supported, had made no little stir in the valley, when Blennerhasset undertook to answer them. Over the signature of "Querist" he now published a series of essays in the Ohio Gazette to prove that the scheme denounced so bitterly by the Western World was not so bad after all; that there were several reasons why the West should part company with the East, and why Ohio in particular would be a gainer. The first of the series was published on the fourth of September.

On that day Burr was at Cincinnati. A week later he crossed the Ohio to Lexington and hurried to Nashville, was given a public dinner, enlisted Andrew Jackson in his cause, and on the first of October was back again at Lexington. Never had his prospects seemed brighter, never had success seemed so near. Both up and down the valley all was activity in his behalf. Fifteen boats were building at Marietta; six others were soon to be begun on the Cumberland. Men were enlisting; provisions were being gathered, and, to keep up the appearance of a great land company, the purchase was made of the Bastrop Grant on the river Washita.# Into

* Daveiss to Jefferson, January 10, 1806. Clark's Proofs of the Corruption of General James Wilkinson, pp. 177–184.

† Daveiss to Jefferson, February 10, 1806. Idem.

‡ Jefferson to Daveiss, February 15, 1806. Idem.

This famous claim was for land on the river Washita, in the Territory of Orleans. It was really a contract between the Spanish Governor of Louisiana and Baron Bastrop, by which the latter bound himself to settle five hundred families on a tract thirty miles square in 1797. The Spanish Governor was to supply the settlers with food for six months. Governor Carondelet was unable to fulfil his part of the contract, and released Bastrop from the requirement regarding the families. Claiming that this did not impair the title, Bastrop sold

his plot had been drawn men of every rank and of every description from New Orleans to New York—Senators and ex-Senators, judges, soldiers, men of education, men of wealth, young men, boatmen, field-hands, laborers. To each, with infinite skill, had been presented that allurement he was least able to resist. For the ambitious there were titles, honors, military rank; for the avaricious, prospects of boundless wealth; for the poor and ignorant, acres of land.

Flourishing as his cause seemed, it was in reality already doomed. The essays of "Querist"; the return of Burr; the company he kept; the boats, clearly for military purposes, building at Marietta; the babble of Blennerhasset, made Daveiss more positive than ever that the old plot was about to be executed. Without delay he openly accused Burr of being at the head of a conspiracy to deliver over the Western territory to England and Spain, and asserted that two hundred thousand dollars had been drawn from Lexington, from Bardstown, and from Louisville to further the scheme. The whole valley was by this time greatly excited. One newspaper remarked that the doors of this infamous conspiracy would soon fly open, and that then people would believe what had so often been foretold them.* Another ventured the opinion that Burr was attempting to form a third party in Kentucky.† A third asserted that the men of Wood County, Virginia, had met to consider the best way to defeat the disorganizing views of Burr, had formed a volunteer company, and sent an address to Jefferson. ‡ A fourth declared a rumor was afloat that the President had issued an order to arrest Burr on a charge of treason.# He had, in fact, done nothing of the kind. Concerning the conduct of Burr, information had come to Jefferson from many sources, but it was not till late in October that he thought it necessary to lay that information before the Secretaries. When he did, they with difficulty made up their minds what to do. One day it was resolved to bid the Governors of Ohio and Indiana, Mississippi and Or-

to various persons, who sold in turn to a Charles Lynch, who sold to Burr. The area sold by Lynch was three hundred and fifty thousand acres.

* Scioto Gazette.

† Aurora.

‡ Gazette of the United States.

Alexandria Expositor.

leans, and the district attorneys of Kentucky and Tennessee, watch Burr closely, and, on the first overt act, arrest and try him for treason.* Two days later it was determined to send Preble and Decatur to New Orleans to take command of a fleet of gun-boats, and to send John Graham, Secretary of the Orleans Territory, through Kentucky to find out what Burr was doing. † Next day, however, the Secretaries again changed their minds. Letters were not to be written to the Governors. Preble and Decatur were not to be despatched to New Orleans, but John Graham was, as he went southward, to notify the Governors verbally, and make inquiries into the movements of Burr.‡

Thus instructed, Graham hurried westward, but hardly had he entered Ohio when he heard that the District Attorney in Kentucky had begun to act. The step was a bold one. For, though letter after letter had been sent to Jefferson, giving names, citing evidence, assuring him most positively that a plot was on foot, the President had taken no notice of them whatever. Not a word in answer, not so much as a line in acknowledgment of the receipt of the letters, had come from Washington. To one so convinced of the existence of a conspiracy as Daveiss, such conduct seemed to make Jefferson a party. Yet he did not hesitate on the very first opportunity to take that vigorous course for which, in time, Jefferson denounced and then removed him from office. The opportunity came on November third, when the United States District Court opened its session at Frankfort. On the fifth Daveiss rose in Court, made an affidavit that he was in possession of evidence to show that Burr had formed an association for waging war against Spain, invading Mexico, and breaking up the Union; was raising forces and buying supplies, and moved that a process for his arrest be issued.# On the bench sat Harry Innis, who had long been a pensioner of Spain, had been as deep as Wilkinson in the Spanish plot, and had been charged with conspiracy by the Western World. As to what must be

* Cabinet Memoranda, October 22, 1806.

† Cabinet Memoranda, October 25, 1806.

‡ Cabinet Memoranda, October 25, 1806.

The affidavit is printed in full in the Aurora, December 1, 1806.

done he was not for a moment in doubt; but he took three days for pretended deliberation, and then denied the motion, and gave two reasons. The Court, he declared, had not the power to do what Daveiss asked, and if it had, the evidence before it was not enough to justify the exercise of such power.* Daveiss therefore moved for a warrant to summon a Grand Jury, before whom he would present the accused. Burr, who was in the Court, now came forward and demanded inquiry. The warrant was then issued, a Grand Jury at once empanelled from the men that filled the court-room, sworn that same afternoon, and their sitting immediately adjourned till November twelfth, the day fixed for the examination.

News of these proceedings spread far and wide, and on the day appointed the town of Frankfort swarmed with an eager and impatient crowd gathered from twenty miles around. They filled the court-room; they stood in a dense mass about the door and so blocked every avenue of approach that it was with great difficulty that the jury could get within the building. When the judge was seated and the Court opened, the names of the jurymen were called. One did not answer. Daveiss not being in court, the judge sent off a messenger to tell him that the jury was incomplete. Entering a few minutes later, he informed Judge Innis that it did not matter, as his chief witness was in Indiana, and, to the astonishment of all, moved for the discharge of the jury. In an instant roars of laughter, mingled with shouts of derision, rose from the crowd, for judge, jury, and spectators were all for Aaron Burr. In the midst of the uproar Burr, with Henry Clay for counsel, entered the Court, where, during the silence which followed his entrance, he delivered one of those dignified and quiet addresses he so well knew how and when to make; and then left the room in triumph.†

This was what Graham heard when, toward the middle of November, he came down the Ohio to Marietta. There he tarried a few days gathering evidence, and then passed on to Chillicothe, where, the Legislature being in session, he secured the passage of a law authorizing the Governor to use the

* Aurora, December 1, 1806. † Ohio Gazette, November 27, 1806.

militia.* The law was to run for one year, and under it preparations were instantly made to seize the boats at Marietta. It was now the sixth of December. The second was a date memorable in the life of Burr, for it was on that day that he again appeared before the District Court at Frankfort to defend his injured honor; and it was on that day that the people of the Eastern cities read for the first time the proclamation of the President announcing the conspiracy, and the full and careful statement of Eaton describing the treason. †

On the twenty-fifth of November Daveiss renewed his motion in the District Court, and the second of December was fixed for the hearing. A second time the Grand Jury was empanelled; a second time Burr and Clay appeared; a second time the witnesses fled; a second time judge and jury and spectators were for the culprit; and a second time he was acquitted with shouts of joy. He was more than acquitted. He was the hero of the hour. The jury signed a paper setting forth that, in their opinion, Aaron Burr had done nothing injurious to the welfare of the United States. The people of Frankfort gave him a fine ball. But his triumph was soon over. The jury might fail to see any evidence of guilt; but the President was in possession of much. From the tenth of January, when Daveiss wrote his first letter to Jefferson, hardly a month went by without bringing overwhelming testimony from some new source. From William Eaton, from the Postmaster-General Gideon Granger, from John Nicholson, from George Morgan, from General Neville, from the judges of the district in which Cannonsburg lay, came warnings which ought not to have been disregarded. But the evidence which weighed most with Jefferson, the evidence which at last roused that sluggish nature to feeble action, came from the American camp at Natchitoches.

Crossing the Alleghanies in August, Ogden and Swartwout went westward as speedily as possible. They had expected to meet Wilkinson at St. Louis; but, hearing at Kaskaskia that he had gone south, they followed him down the Mississippi to Fort Adams, where they were told that he had gone into the

* Laws of Ohio, Chap. iii, December 6, 1806. † Aurora, December 2, 1806.

Red river country. Thither Swartwout went in search of him, while Ogden pressed on to New Orleans. On the evening of October eighth Swartwout reached Natchitoches and delivered to Wilkinson in person Burr's lying letter of July twenty-ninth. The letter told him that all was in readiness; that troops had been enlisted; that England would furnish the naval force, and that Truxton was going to Jamaica to arrange with the British admiral at that station; that about November fifteenth five hundred men would start from the Falls of Ohio, and by December fifth reach Natchez; and bade Wilkinson be there.

Having passed the night in deciphering the letter and reflecting on it, Wilkinson in the morning again took that dark and crooked course he so well loved. Drawing aside the colonel who commanded the troops, he read the letter, and declared he would send word of the plot to Jefferson and move the soldiers to New Orleans. Yet he did not write for twelve days. He well knew that the purpose of the expedition was to secure the independence of Orleans, and that Burr was in command. Yet in the letter he assured Jefferson that the expedition was against Vera Cruz, that he did not know who were the leaders, nor what were their intentions regarding Orleans.* He knew that the expedition was planned to leave Kentucky on November fifteenth. Yet he sent no word to Fort Adams, nor to Chickasaw Bluffs, nor to Fort Massac, nor to the authorities of Kentucky or Tennessee.

On the twenty-fifth of November an officer bearing these despatches presented himself at the White House and delivered them to Jefferson. He had come from the Red river country; but such had been his haste that not quite thirty-five days had been passed on the journey. Without a moment's delay the Secretaries were summoned, a council held, and the course to be taken decided. Orders were to be sent to the commanding officers at Pittsburg, at Fort Massac, at Chickasaw Bluffs, and to Wilkinson, to stop every boat and

* "It is unknown under what authority this enterprise has been projected, from whence the means of its support are derived, or what may be the intentions of its leaders in relation to the Territory of Orleans."—Wilkinson to Jefferson, October 21, 1806. Wilkinson's Memoirs, vol. ii, Appendix xcv.

arrest every man believed to be concerned in the schemes of Burr, whether they contemplated an attack on New Orleans or an attack on the dominion of Spain. A proclamation was to be issued and a call for help to be made on the Governors of Ohio and Kentucky and on Andrew Jackson, of Tennessee. The proclamation is dated November twenty-seventh. No mention is made in it of the name of Burr. Certain persons are declared to be conspiring against Spain; such conspiracy is pronounced illegal, and all civil and military officers are bidden to seize and hold persons and property concerned in it.

While Jefferson was signing his proclamation at Washington, De Pestre rode into Philadelphia with letters and messages to Yrujo and to the conspirators at New York. But Yrujo needed little information. He knew all. Two weeks before De Pestre knocked at his door, he wrote to Cevallos a long account of the plans of Burr. Five hundred men, he declared, were gathering on the Ohio. Under the pretext of settling on a great land-purchase lately made, Burr would lead them down the Mississippi. Reaching Cincinnati, they would seize the arms deposited there by Government. At Natchez they would again stop till the Assembly of Orleans had met, declared independence, and invited Burr to rule.* To this knowledge De Pestre added little; but that little was most valuable. To the rumors of an attack on Mexico, Yrujo was to give no heed. They were set afloat to explain the arming and the enlisting, which could no longer be kept secret. The real purpose of Burr was the liberation of the Western States. For such liberation, Louisiana, Orleans, Tennessee, and Ohio were ready. Kentucky was not. All must be arranged to coerce her if, when the time came, she attempted to resist. Would not Yrujo see to it that, when the revolution began, the Governor of West Florida stopped the couriers the friends of Government would send with the news to Washington? Instead of doing so, Yrujo warned the Governors of West Florida and Baton Rouge not to trust Wilkinson. "He has," said the Marquis, "acted in good faith hitherto, but his fidelity

* Yrujo to Cevallos, November 10, 1806. Manuscript, Spanish Archives. Adams's History of the United States, vol. iii, pp. 261, 262.

cannot be depended on if he has a greater interest in violating it."

At New York De Pestre made a short stay, and soon came back to Yrujo with a singular tale. The leaders and commanders, he said, had been ordered to their posts—some to New Orleans; some to Washington, to watch the Government and keep Burr informed of what it did; some to Norfolk, to gather provisions; and some to Charleston, to take command of the troops supposed to be raised by Alston, in South Carolina. That Yrujo believed these men would start for their posts is far from likely, for the Government had already begun to act, the proclamation denouncing the conspiracy was almost three weeks old, and the whole plot was doomed to failure. In Ohio the Governor called out the militia, and seized most of the boats building at Marietta. In the West Blennerhasset with the conspirators, some thirty in number, and the supplies, fled down the Ohio on the night of December tenth and escaped.

Burr meanwhile was on his way to Nashville. Reaching there December fourteenth, he was asked by Jackson to explain his conduct, and solemnly denied any desire to break up the Union. The boat-building, therefore, was suffered to go on unmolested. On the nineteenth the proclamation arrived. Yet even then no attempt was made to seize Burr. Such impunity, however, could not last. A hint was accordingly sent to him by the authorities at Nashville that he would do well to flee; and on the twenty-second, abandoning all his boats but two, he bade farewell to Jackson, whose duty it was to have seized him, received from the General the value of the boats and supplies he left behind, and began his journey down the Cumberland. With him went a nephew of Mrs. Jackson. At the mouth of the Cumberland they met Blennerhasset, and the two parties, numbering a hundred men, in thirteen boats, floated on with the current of the Ohio past Fort Massac. The fort stood on the Illinois side of the river, was garrisoned by the First Infantry, and commanded by Captain Bissell. To him on the twenty-seventh of November had been sent a copy of the proclamation and specific orders what to do. Yet, when the flotilla slipped by the place on the night

of December twenty-ninth, neither the proclamation nor an order had been received. Pulling ashore a mile before the fort, Burr spent the next day in the neighborhood, visited Captain Bissell, obtained a furlough for a sergeant he had persuaded to join his force, and on the last day of the year again started for New Orleans, and January tenth reached a place called Bayou Pierre, some thirty miles above Natchez. While the boats made fast to the bank, Burr landed and went to the plantation of a man named Peter B. Bruin, one of the district judges of the Territory of Mississippi. Asking for news, he was given a copy of the Moniteur containing his letter to Wilkinson.

The letters despatched to Jefferson, Wilkinson next sent word to the commanding officer at New Orleans,* hurried to the Sabine, spent ten days on the frontier, and came back to Natchitoches, where a packet reached him from Erich Bollmann, then at New Orleans. Enclosed in it was a copy of Burr's letter of July and a note from Dayton. Hardly had these come to hand when a letter from Natchez informed him that reports from St. Louis announced that a plot existed for the separation of the Western country, that the revolution was soon to begin, and that on the fifteenth of November, Ohio, Indiana, Kentucky, Tennessee, and the Territory of Orleans were to publish a declaration of independence. And now for the first time Wilkinson seemed truly alarmed and in earnest. He wrote to Colonel Cushing, then on the Sabine, to hurry to New Orleans.† He went at once to Natchez, and from Natchez sent out new alarms to Jefferson,‡ to Claiborne,# and to the commander at New Orleans, and November twenty-fifth entered that city himself. There he spread terror on every hand. The militia were placed under his orders. The Legislature was summoned to a special session. The merchants were gathered and told of the plans of Burr.

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* Wilkinson to Lieutenant-Colonel Freeman, October 23, 1806. Wilkinson's Memoirs, vol. ii, Appendix ci.

† Wilkinson to Colonel Cushing, November 7, 1806. Memoirs, vol. ii, Appendix xcix.

‡ Wilkinson to Jefferson, November 12, 1806. Memoirs, vol. ii, Appendix c.

Wilkinson to Claiborne, November 12, 1806. Memoirs, vol. ii, p. 328.

A temporary embargo was laid that sailors might be had to put gun-boats and ketches in fighting trim. Many of the merchant vessels were armed and manned, and on Sunday, December fourteenth, arrests began. Bollmann was seized in New Orleans, Swartwout and Ogden at Fort Adams, and all three hurried on board the bomb-ketch Ætna, then lying at anchor off the city. The arrest was wholly illegal; but the attempt now made to hold the prisoners was a flat defiance of their rights and of law. The Superior Court of Orleans issued writs of *habeas corpus*. But so completely was the city in the hands of Wilkinson that a day was wasted before the officer bearing the writs could find a boatman to row him out to the bomb-ketch. When he did reach the Ætna, Ogden alone was there. Swartwout and Bollmann had been carried off to merchant-vessels and were at once sent north by sea. Ogden was given up, and a shameful contest for his possession began. The Court set him free. Wilkinson seized him a second time. The Court again issued a *habeas corpus*. Wilkinson defied it and held the prisoner. The Court attached Wilkinson for contempt. The General defied the attachment. The Judge called on the Governor for help; the Governor dared not give it, and the Judge, declaring that the judicial power had been laid low by the military power, resigned, and Wilkinson ruled Orleans.

To justify the arrest of Bollmann, Wilkinson charged him with treason, and swore to an affidavit, containing a copy of Burr's letter of July twenty-ninth. From the Court the letter went to the newspapers. By the newspapers it was spread all over the Territory, and in the columns of one of them was read with horror and dismay by Burr. Betrayed, disheartened, alarmed for his own safety and the safety of his men, he hastened back to the boats, drew them to the west bank of the river, where, out of the jurisdiction of Mississippi, he made a camp, posted sentinels, and drilled the men. While thus engaged, Cowles Mead, Secretary and Acting Governor of Mississippi, began to assemble the militia at Coles Creek, a few miles below Bayou Pierre, and sent several officers across the river to urge Burr to surrender. In this they succeeded, and on January seventeenth Burr met Mead and sur-

rendered. He was at once taken to Washington, the capital of the Territory, and brought before Judge Rodney. The Attorney-General, George Poindexter, gave it as his opinion that the prisoner could not be held. There was, in the first place, he said, no evidence that Burr had committed any offence within the boundaries of Mississippi. The Supreme Territorial Court, in the next place, before which Burr must be brought, was a court of appeals, and could not have original jurisdiction. He asked, therefore, that Burr be sent before the Supreme Court of the United States, that the place of trial might be determined. Rodney thought otherwise, and released Burr on bail, to appear from day to day till the adjourned meeting of the Supreme Court of the Territory. Again good fortune attended him. Poindexter made the old argument; but the judges were divided, the motion was lost, while the Grand Jury not only threw out the bill, but returned the arrest, the manner of the arrest, and the conduct of the Acting Governor, as grievances.

It was now Tuesday afternoon. On Wednesday evening, February fourth, the Grand Jury was discharged. Burr thereupon demanded a release from his recognizance.* This was refused, and, alarmed for his safety, he hastened to the house of one of his sureties, and from there fled to the woods. From his hiding-place he wrote to Robert Williams, Governor of the Territory. The vindictive temper and unprincipled conduct of Judge Rodney had forced him, he wrote, to withdraw from public view. He was still ready, as he had ever been, to submit to civil authority; but, before he again surrendered, he must know of what he stood charged, what security would be required, and must be assured that he would not be sent from the Territory.†

The note was long in reaching Mead, who in the mean time put forth a proclamation offering two thousand dollars for the arrest of Burr.‡ The moment he beheld this he once more wrote to the Governor, denied that he had fled his bail,

* Trial of Aaron Burr, Carpenter's edition of 1808, vol. iii, Appendix, p. 4.

† Ibid., Appendix, p. 6.

‡ February 6, 1807. Ibid., Appendix, p. 5.

and asserted that he was bound to appear if an indictment was found, and not otherwise.* The date of this letter is February twelfth; the answer of the Governor is dated February thirteenth. The hiding-place of Burr could not, therefore, have been far from the town of Washington. Wherever it was, he soon left it, and, disguised as a Mississippi boatman, fled across the Territory toward the Spanish frontier. Late in the night of February eighteenth he stopped at a log tavern in the town of Wakefield, Alabama, was recognized by the register of public lands, and the next morning was arrested by Lieutenant Gaines, from Fort Stoddert At the fort he was detained three weeks, and then sent on to Richmond, Virginia, where, on March thirtieth, in a room in the Eagle Tavern, he was brought before John Marshall for examination and commitment. That dread of being sent north, which so disturbed him in Mississippi, had now left him. His situation had changed greatly. In Mississippi he was the proscribed and hunted outlaw; at Richmond he was the hero of the hour. In the South his friends and fellow-conspirators had been seized, their legal rights set at nought, the courts defied, and the writ of *habeas corpus* violently suspended. In the North these friends had been set at liberty, their treatment denounced, and the request of the President that the acts of Wilkinson be made legal refused by the House of Representatives.

The proclamation had issued on the twenty-seventh of November; on December first the ninth Congress assembled, and on December second the annual message was read. In that message Jefferson affected to treat the conspiracy as most trivial. He had been informed, he said, that a great number of private persons were combining, arming, organizing for an expedition against the territories of Spain. This was illegal. He had therefore so proclaimed it, and had ordered the boats and arms to be seized and the men engaged arrested. So much was due to good faith and good order. Thus dismissed in a few words, Congress heard no more of the matter for six weeks. Then John Randolph, weary with waiting and goaded

* Trial of Aaron Burr, Carpenter's edition of 1808, vol. iii, Appendix, p. 6.

on by the demands of the press for action, rose in his place and moved a call for information. The motion was carried, and six days later a long message came down to the House in reply. Ignoring the letters of Daveiss, in January and February, and the warning of Eaton, Jefferson led the House to believe that it was not till September that he heard of the actions of Burr; that it was not till October that the purpose of the conspirators was fully known, and that since October no pains had been spared to bring the rogues to justice. He told the House of the action of Daveiss, which he denounced as "a premature attempt" to punish Burr more harmful than beneficial; of the orders to the Governors of Orleans and Mississippi; of the orders to Wilkinson; of the action of the Legislatures of Ohio and Kentucky; of the arrival of Wilkinson at New Orleans; and of the illegal arrests of Bollmann, Swartwout, and Ogden. He complained that one had been liberated by a writ of *habeas corpus*, and announced that the others, having been sent north by sea, might be expected to arrive any day.

A copy of the message was, of course, sent to the Senate, where in less than four-and-twenty hours a bill suspending the writ of *habeas corpus* in certain cases for three months was rushed through with the rules suspended.

It was on a Friday that the bill passed. The House did not sit on Saturday, and Monday came, therefore, before Samuel Smith, a Senator from Maryland, entered the House, and, taking his stand before the Speaker's desk, said: "Mr. Speaker, I am directed by the Senate of the United States to deliver to this House a confidential message in writing." The floor and the gallery were instantly cleared, the door shut, and the bill and message delivered. This done, the Senator left, but he had not more than reached the Senate when the injunction of secrecy was taken off, the doors again thrown open, and a motion made that the bill be rejected. This motion was soon withdrawn to make way for another; and the debate then began.

The opponents of the bill, and they were six times as numerous as the supporters, declared it both dangerous and unconstitutional, and not fit to be considered. What, said

they, is a writ of *habeas corpus?* It is a writ issued by a judge directing a certain person in custody to be brought before a court that the legality of his confinement may be looked into. If, in the opinion of the judge, the legality is not established, the prisoner will be discharged; if, in the opinion of the judge, there is good reason to believe the prisoner guilty of the offence charged, he will, of course, be remanded. Is this a right to be suspended to gratify the mere apprehensions of gentlemen? Are we to accuse fellow-citizens of grave crimes, and then deprive them of the right to appear in court and prove their innocence? No. Very wisely, then, does the Constitution declare that "the privilege of the writ of *habeas corpus* shall not be suspended except when, in case of invasion or rebellion, the public safety shall require it." But the country is not invaded. There is no rebellion. How then can we constitutionally suspend the writ? Gentlemen say there is a rebellion. Be it so. May we suspend the writ in every case of rebellion? No, we may not; only, says the Constitution, only when, in case of rebellion, the public safety requires it. Does the public safety require it? The President says not. "The fugitives from the Ohio," he informs us, "and their associates from the Cumberland cannot threaten serious danger even to the city of New Orleans." How then can public safety require it? No one could tell; and, when the yea and nay vote was taken on the question, Shall this bill be rejected? one hundred and thirteen answered yea, and nineteen nay.*

Bollmann and Swartwout meantime had arrived, and the legal contest at New Orleans was re-enacted at Washington. The same day the House threw out the Suspension Bill, the Attorney-General appeared before Judge Cranch, of the District Court, produced an affidavit of Wilkinson, and a sworn statement of Eaton, charging Bollmann and Swartwout with treason, and asked for a warrant for their arrest. The warrant was issued. The men were arrested, and an application promptly made to the Supreme Court for a writ of *habeas corpus*. On the thirteenth of February the writ was granted,

* Annals of Congress, January 26, 1807.

on the sixteenth a motion was heard for the discharge of the prisoners, and on the twenty-first they were set free. Ogden, who had reached Baltimore, was soon after liberated there.

Such had been the experience of the agents when, at noon on March thirtieth, the United States Marshal entered the room in the Eagle Tavern, where the principal was under guard, read a warrant, made the arrest, and led Burr to another room, where sat the Chief Justice. There George Hay, the District Attorney, moved a commitment; but Marshall decided to hear the motion in public, at ten o'clock the next day, in the State Capitol. The charges were treason and misdemeanor. That of treason was dismissed; but Burr was held, under heavy bonds, to answer the charge of misdemeanor at the next session of the Circuit Court.

The next session began on May twenty-second. Punctually on that day the trial opened, and, with one short interruption, dragged on for five months. During these months the town of Richmond presented a scene unparalleled in the history of our country. The fame of the culprit, the eagerness of the people to see him, the sympathy which his cause aroused, the host of witnesses called by the Government, brought together hundreds of strangers from every quarter of the country. Among those who, evening after evening, crowded the sidewalk of Brick Row, and jostled each other in the Eagle Tavern, were men renowned in almost every profession, in almost every occupation, in almost every walk of life. Soldiers, sailors, orators and judges, senators and politicians, leaders of armies, leaders of parties, lawyers, adventurers, all were there. Thither came Truxton, who, in the days of the insolent Directory, had twice humbled the tricolor and been thanked by Congress for his services. Thither came Eaton, the hero of Derne, and Erich Bollmann, notorious for his share in the attempt to liberate Lafayette from the Castle of Olmütz. Thither came Benjamin Latrobe, first of American architects then living and first of all men to use American vegetation in architectural design. There, too, were Luther Martin, who led the Maryland bar, and William Wirt, whose orations are still the delight of schoolboys; William B. Giles, who led the Republicans in the Senate, and John Randolph of Roanoke, who led

the Quids in the House of Representatives; Edmund Randolph, once Governor of Virginia, a delegate to the Convention that framed the Constitution of the United States, Attorney-General and a Secretary of State under Washington; John Graham, Secretary, and George Poindexter, District Attorney, of Mississippi Territory; Commodore Shaw and General James Wilkinson; Harman Blennerhasset and William Duane, who still edited the Aurora and still ruled the politics of Pennsylvania. There, too, were John Marshall, the greatest of all our chief justices, and Andrew Jackson, the most wilful, the most despotic, the most interesting of all our Presidents.

But it is needless to go through the list. The name of Burr is of itself sufficient to bring before us every scene in the curious farce these men now enacted. We can see the hall of the Virginia House of Burgesses, where the Court met daily. We can see the calm, deliberate Judge on the bench, and before him such an array of lawyers as had not been gathered since the day when, in another legislative chamber, the position of the actors was reversed; when the culprit Burr sat in the judgment-seat, and another justice of the Supreme Court stood a prisoner at the bar. We can see Martin as he denounces Jefferson for letting slip "the hell-hounds of persecution to hunt down my friend," and Wirt as he delivers those two fine passages which begin, "Who, then, is Aaron Burr?" and "Who is Blennerhasset?" We can see Burr marching back and forth between the penitentiary and the court, surrounded by his guards and escorted by two hundred gentlemen on foot, and behold him at his daily receptions, more crowded than the levees of any President. We can see the benches packed with eager listeners, and the crowd that stood upon the court-house green. We can see the calm of Marshall as he delivers his decisions, and the rage of Jefferson as he reads of them. We can see the President defy the subpœna of the Court, and in his gusts of passion bid his attorney now break down Martin, "that bull-dog of Federalism," and now move to commit him, "as *particeps criminis* with Burr." We can see the confusion, the hesitation, the hang-dog looks of Wilkinson, traitor, perjurer, false friend, pensioner of Spain, as he stands before the jury for

examination. We can see John Randolph laboring in the jury-room to indict him for treason, and Aaron Burr laboring in the court-room to attach him for contempt. We can see Swartwout jostle him in the Eagle Tavern, and then post him as a liar, a villain, and a coward, because he will not fight. We can see Andrew Jackson abuse him in every company, and, choking with excitement, laud Burr to a crowd of admirers on the court-house green. Eaton strutting on the streets, tricked out in colored clothes and Turkish sash, tippling in the taverns, and prating of his wrongs. Martin extolling on every hand the charms of Theodosia Burr. Theodosia winning friends to her father's cause. The husband of Theodosia striving to appease the vengeance and pay the debts of Blennerhasset. Blennerhasset in his prison jotting down in his diary the names of the men who came to see him, and of the women who sent him fruit and jams; Duane holding up to him the perfidy of his companions and tempting him to give evidence against Burr; such are some of the scenes and some of the characters of that singular trial.

On the twenty-second of May, when all was ready, when the judges had entered, when the lawyers had bowed, when the jurymen were called and were about to be sworn, Burr arose and addressed the Court. The law for the formation of a Grand Jury had, he declared, been violated. By that law the Marshal was empowered to summon twenty-four freeholders, any sixteen of whom that appeared in Court were to form a Grand Jury. But the Marshal had done more. He had summoned twenty-five, had excused two, and had put in their places Wilson Cary Nicholas and William B. Giles, both open and implacable enemies of Burr. All this was illegal. The Court alone could summon twenty-five, the Court alone could excuse, and the Court alone could fill the places of those excused.

Marshall decided the objection to be well taken, and Giles and Nicholas were ruled off the panel as wrongly summoned. No sooner was this done than they were regularly summoned, only to be again removed, this time by the right of challenge from Burr. It was late in the afternoon when the sixteenth man was accepted, John Randolph made foreman, the charge delivered, and the Grand Jury sent to their room. On the

next day, which was Saturday, and again on Monday, the jury was adjourned because of the absence of General Wilkinson, the chief witness for the Government. The motion to adjourn then led the defence to raise the question of the kind of evidence to be expected from Wilkinson, which in turn led the prosecution to move that the Court hear witnesses for the commitment of Burr for high treason. The defence objected. The Grand Jury was then in session, and, being in session, alone could commit. Marshall overruled the objection, and ordered the examination of witnesses to go on. The rest of the week was then spent in discussing the order in which the witnesses should be examined, in hearing objections to the testimony when given, and in fixing an amount of extra bail. General Wilkinson being still absent, an adjournment was taken from June third to June ninth. A motion and the argument on the motion that the Court issue a *subpœna duces tecum*, directed to the President of the United States, now took up the time till June thirteenth, when Marshall read his opinion. The motion had given rise, he said, to three questions: May a subpœna be issued in any case to the President? If so, may it do more than bid him come in person? May it direct him to bring with him a paper which is to be the substance of his testimony? The Constitution made it clear, and all agreed that a general subpœna could be issued. The provisions of the Constitution, and the statute which gave to the accused a right to a compulsory process of the Court, made no distinction as to persons. If such a distinction existed, it must be in the law of evidence. It was true that the English law did make one exception, and that one exception was the King. He could not be subjected to the process of a court. But between the King of England and the President of the United States there was a vast difference. It was a principle of the English Constitution that the King could do no wrong. It was a principle of the United States Constitution that the President could do much wrong, and provision was made for impeachment and removal. The King could not be a subject. The President had been and must again be a citizen. If there was any ground on which he could claim exemption, it must be that national objects demanded his whole time. But it was

well known that this demand was not unremitting. The allusion of Marshall was to the months which, each year, the President spent at Monticello. Even if his time was taken up with public affairs, that would be no reason why the process should not be issued, though it might be a reason why the process should not be obeyed.

If, then, the law made no difference between the President and a private citizen in the case of a general subpœna, a subpœna *ad testificandum*, why should it make a difference in the case of a subpœna *duces tecum?* The one bade him come; the other bade him come and bring a certain paper with him. Marshall could see no reason; sustained the motion, and issued the subpœna. Jefferson flatly refused to appear. But the papers were in time transmitted by the District Attorney.

While the argument was going on, Wilkinson arrived, was brought into Court, sworn, and sent before the jury. The defence thereupon attempted to secure an attachment against him for contempt of Court. He had, they charged, obstructed the course of justice by the suppression of witnesses, and were deep in the argument when the jury, with Randolph at their head, marched into Court with four indictments. Two were against Harman Blennerhasset and two against Aaron Burr. Blennerhasset was still at large; but Burr was committed to the custody of the Marshal and lodged that night in the jail. From the jail he was soon moved to the penitentiary, because of the foulness and unhealthfulness of the building used as a lock-up. Two days later he was brought to the bar, pleaded not guilty, and was remanded for trial. By that time ten more indictments were presented against Jonathan Dayton, and John Smith, Senator from Ohio, Comfort Tyler, Israel Smith, and David Floyd.

Monday, the third of August, was the day fixed for trial, but the seventeenth came before the jurors were selected and the indictment read. In it were two counts. One set forth that Aaron Burr, moved and seduced by the instigation of the devil, had levied war against the United States; the other charged him with sailing down the Ohio and the Mississippi for the purpose of taking New Orleans. To prove these counts,

the prosecution began by defining that overt act of levying war which the Constitution declares is treason. Their definition was, "an assemblage of armed men convened together for the purpose of effecting by force a treasonable design, which force is meant to be employed before their dispersion." This definition made it necessary to show that there was a treasonable design, and that there was an assemblage of men for the purpose of accomplishing that design. To prove the design, Eaton, Truxton, Colonel Morgan, and his sons were called, sworn, and examined. To prove the assemblage of men on Blennerhasset's Island, reliance was put on the testimony of the gardener, the groom, the farm-hand, the man employed by the Governor of Ohio to watch Blennerhasset, the man who made the setting poles for the boats, and Dudley Woodbridge, the business partner of Blennerhasset at Marietta.

And now the defence interposed. Not a scrap of evidence, they claimed, had been produced to show that Aaron Burr was present when the act of levying war was committed on the island. Indeed, the attorney for the prosecution admitted that Burr was at that time neither present nor within the jurisdiction of Virginia. The defence, therefore, moved that further evidence be not admitted, and gave four reasons. The first was, that Aaron Burr not being on the island when the men assembled, could not be a principal in the treason within the meaning of the Constitution; the second was, that, as the indictment charged him with levying war, it must be proved as laid, and no evidence to show him guilty of the act by relation could be admitted; the third was, that if he were a principal at all he must be a principal in the second degree, and no evidence could be let in to show him to be such till a record of the conviction of the principal in the first degree had been produced in Court; the fourth followed from this, and was, that no evidence to connect Burr with the men on the island, and so make him guilty of treason, could be offered till the men on the island had been proved guilty of treason, which had not been done.

During ten days the Court heard argument. Every lawyer engaged in the case spoke. When they were through, the Chief Justice declared that such solidity of argument, such

displays of legal learning, such eloquence, he had never heard before. Of eloquence there was, in truth, a fine show, for it was during this discussion that Wirt delivered that well-known oration in which he drew the characters of Blennerhasset and Aaron Burr. In the opinion of Marshall, the indictment charged Burr with levying war against the United States. To make good the accusation, the overt act must be proved, not by the establishment of other facts from which the jury could reason to the particular act charged, but by the testimony of two witnesses. There was not, however, even one witness. Indeed, it was admitted by everybody that Burr was not on the island, was not in Wood County, was not within the jurisdiction of Virginia when the thirty men gathered at the home of Blennerhasset. But his presence was necessary to make him guilty of levying war. All evidence to show him guilty was, therefore, irrelevant, and could not be introduced.

As soon as Marshall had announced his decision the prosecution abandoned the case, which went at once to the jury. Next day the indictment was returned. Across the face of the paper were the words: "We of the jury say that Aaron Burr is not proved to be guilty under this indictment by any evidence submitted to us; we therefore find him not guilty."

This disposed of the charge of treason; but the charge of high misdemeanor remained. New bail was now required, a new jury was sworn, and on September ninth the second indictment was read. The fifth section of the act of 1794 ordains that if any person shall, within the jurisdiction of the United States, begin, or set on foot, or provide, or prepare the means for any military expedition against the territory or dominion of any foreign prince or State, he shall be guilty of a high misdemeanor. Under this law the indictment had been framed, and accused Burr of having, on the tenth of December, 1806, on Blennerhasset's Island, begun a military expedition against the dominions of the King of Spain. But Burr was not on the island on the day named. A second time, therefore, the Court shut out all evidence to connect him with the men who on that day were on the island, a second time a jury brought in a verdict of not guilty, and so ended the trial.

What now followed was an examination on new charges of treason, and the hearing of an argument on a motion to send Burr for trial to Mississippi Territory where overt acts were said to have been committed. The defence made two objections: In the first place, the only court that could take cognizance of the crime charged was a Circuit Court of the United States; in the territories there were no Circuit Courts of the United States, and therefore Burr could not lawfully be sent to Mississippi. In the second place, the verdict already rendered was a bar to further prosecution for different overt acts of the same treason. As to the soundness of these arguments the Court was greatly in doubt, heard a most elaborate discussion, and then decided that it had no power to commit Burr for trial in Mississippi Territory. But, that the verdict was a bar to further proceedings, the Court was not ready to assert; and, while considering the matter, declared that it would hear testimony concerning the behavior of the accused within the United States. During nearly five weeks the examination and cross-examination of witnesses went on. Then the Chief Justice committed Aaron Burr and Harman Blennerhasset for preparing, setting on foot, and providing means for a military expedition against the territory of a foreign prince with whom the United States were at peace. The District Attorney asked that Ohio be made the place of trial.

Marshall granted the request, and the two prisoners, before being discharged, were bound over to appear at the session of the Circuit Court of the United States to be held at Chillicothe in January, 1808. When that time came neither appeared. The Judge, supposing they might have been delayed on the way, and having no other business on the docket, adjourned for one week, after which the examination of witnesses for the United States was begun. After twenty-nine had been sent before the Grand Jury, indictments against Burr and Blennerhasset were returned. As neither was even then present, the District Attorney moved to have their recognizances extreated and their default made absolute. The lawyer who acted as their counsel asked to have the case sent over to the September term. But the District Attorney denied that they could appear by counsel, pressed his motion, and the Court made the default

absolute. That they would have been prosecuted had they appeared is not likely, for no petit jury had been summoned, and without a petit jury they could not have been tried.

The later career of the conspirators is not without interest. From Richmond, Burr and Blennerhasset went with Luther Martin to Baltimore, where the people took a half-holiday, and, in company with John Marshall and Luther Martin, burned them in effigy on Gallows Hill.* Fearing for their personal safety, they fled to Philadelphia, where Burr hid himself so securely that even the editor of the Aurora could not find him out, and, at the very time he ought to have been at Chillicothe, fled in disguise to London. During some years he wandered over Europe, but came back at last to New York, and, in 1836, died on Staten Island. Blennerhasset died in abject poverty abroad. Bollmann, after turning State's evidence and refusing a pardon, vainly attempted to practise medicine at New Orleans, but soon followed Burr to England. Returning to the United States in the midst of the banking excitement, he rose into temporary notice as the author of some "Paragraphs on Banks"; and then again went back to London. Alston became in time Governor of South Carolina. John Adair, at the first attack on the conspiracy, in 1806, re-

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* As illustrative of the humor and the manners of the times, I venture to give the full text of the handbill calling the meeting:

AWFUL!!!

The public are hereby notified, that four choice spirits are this afternoon at three o'clock to be *marshalled* for execution by the hangman at Gallows Hill, in consequence of the sentence pronounced against them by the unanimous voice of every honest man in the community. The respective crimes for which they suffer are thus stated in the record:

1. Chief-Justice M——, for repeating his X. Y. Z. tricks, which are said to have been much aggravated by his strange capers in open court under pleas of irrelevancy.

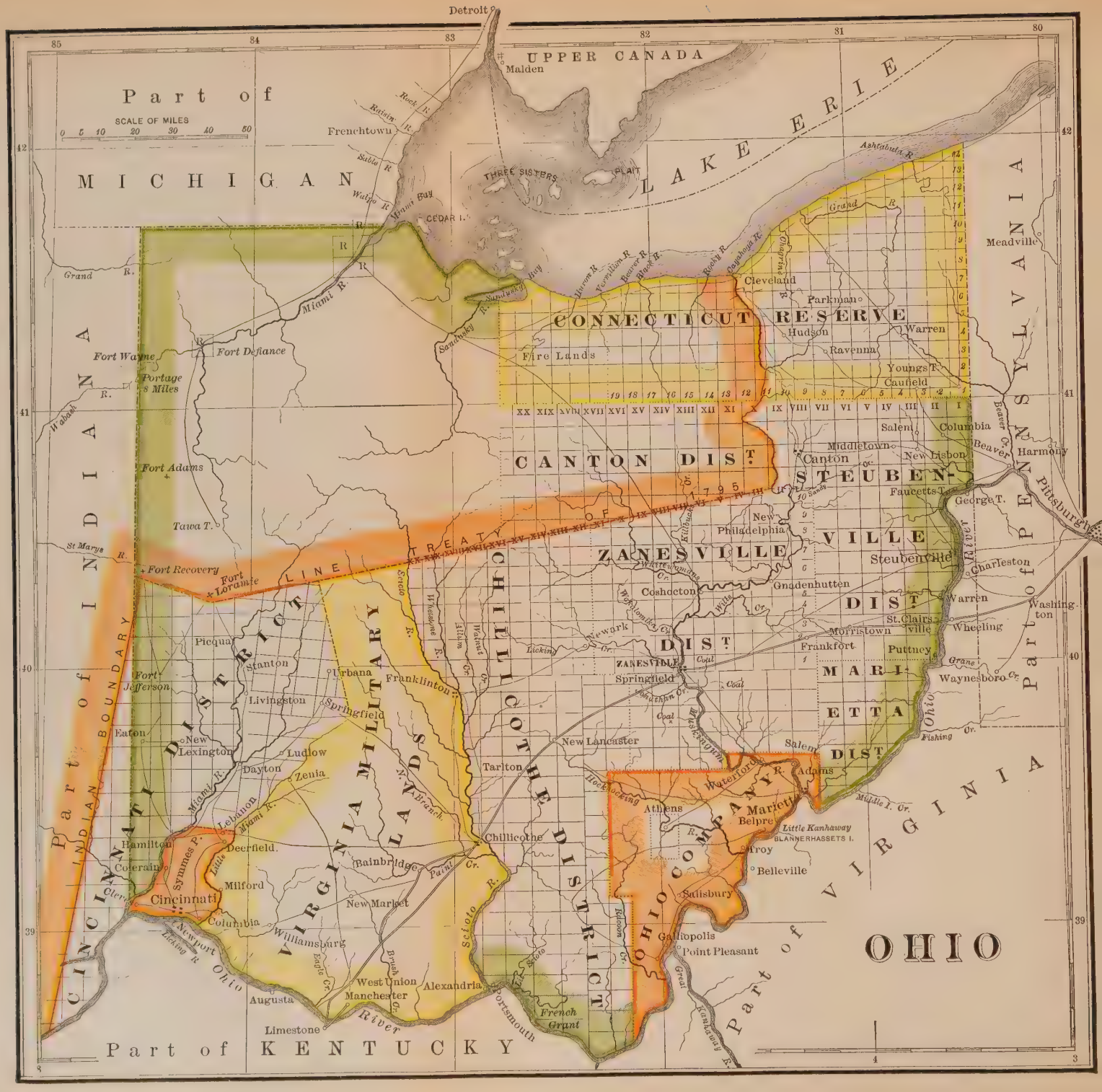
2. His Quid Majesty, charged with the trifling crime of wishing to divide the Union and farm Baron Bastrap's grant.

3. Blunderhassett, the chemist and fiddler, convicted of conspiracy to destroy the tone of the public fiddle.

4th and last—but not least in crime—Lawyer Brandy Bottle, for a false, scandalous, malicious prophecy, that before six months Aaron Burr would divide the Union.

N. B.—The execution of accomplices is postponed to a future day.

signed from the Senate of the United States and was succeeded by Henry Clay. John Smith, a Senator from Ohio, after narrowly escaping expulsion from the Senate as an accomplice of Burr, followed the example of Adair and resigned. Swartwout lived to become collector of the port of New York, and to rob the Treasury of the United States of more than a million dollars. Dayton and Ogden sank at once from view. Of the men who went down the Mississippi with Burr, few ever came back. The rest wandered over the Mississippi Territory, and, it is said, supplied the people for years to come with travelling doctors, small politicians, teachers of music, and, what was needed vastly more, teachers of schools. To the last, Wilkinson continued to pose as an honest man; was protected and honored by Jefferson; was thanked by the Legislature of Georgia for betraying Burr; was acquitted by a packed court of inquiry, and has left behind him, in justification of his life and deeds, three ponderous volumes of memoirs, as false as any yet written by man.


Detroit
UPPER CANADA
Malden
Part of
MICHIGAN
SCALE OF MILES
0 5 10 20 30 40 50
LAKE ERIE
Frenchtown
Raisin R.
Rock R.
Sable R.
Walpe R.
Miami Bay
THREE SISTERS
PLAIT
CEDAR I.
Ashtabula R.
Grand R.
Meadville
Cleveland
Parkman
Hudson
Warren
Ravenna
Youngs T.
Caufield
CONNECTICUT RESERVE
Fire Lands
Salem
Columbia
Middletown
Canton
New Lisbon
Beaver Cr.
Harmony
Pittsburgh
Fort Wayne
Fort Defiance
Portage 5 Miles
Fort Adams
Tawa T.
CANTON DIST.
STEUBEN-
VILLE
Faucetts T.
George T.
New Philadelphia
Steubenville
Charleston
Fort Recovery
Fort Loramie
TREATY OF 1795
LINE
ZANESVILLE
Coshocton
Gnadenhutten
DIST.
Warren
Washington
St. Clairsville
Wheeling
Morristown
Frankfort
Puttney
Grane
Waynesboro
MARIETTA
DIST.
Picqua
Urbana
Franklinton
Springfield
Fort Jefferson
Livingston
Eaton
New Lexington
Ludlow
Dayton
Zenia
Tarlton
New Lancaster
Salem
Adams
Waterford
Athens
Belpre
Little Kanhaway
BLANNERHASSETS I.
Troy
Belleville
Salisbury
Gallipolis
Point Pleasant
Hamilton
Deerfield
Coleraine
Milford
Cincinnati
Columbia
Newport
New Market
Williamsburg
Rainbridge
Chillicothe
Augusta
West Union
Manchester
Alexandria
Portsmouth
French Grant
Limestone
Part of KENTUCKY
OHIO
Part of INDIANA
Part of VIRGINIA
CINCINNATI DISTRICT
VIRGINIA MILITARY LANDS
SCIOTO DISTRICT
OHIO COMPANY'S PURCHASE
INDIAN BOUNDARY
Miami R.
Great Miami R.
Little Miami R.
Symmes P.
Scioto R.
Ohio River
Muskingum R.
Hockhocking
Licking
Walnut Cr.
Wakatomica Cr.
Coal
Paint Cr.
Big Beaver Cr.
Yellow Cr.
Wheeling Cr.
Short Cr.
Fishing Cr.
Middle I. Cr.
Duck Cr.
Little Kanhaway R.
Great Kanhaway R.
Sandusky R.
Sandusky Bay
Cuyahoga R.
Rocky R.
Black R.
Beaver R.
Grand R.
Ashtabula R.
Wabash R.
St. Marys R.
Big Miami R.
Whitewater R.
Seneca R.
Wyandot
Killbuck Cr.
Walhonding R.
Tuscarawas R.
Muskingum R.
Licking R.
Kentucky R.
Ohio River
Scioto R.
Brush Cr.
Eagle Cr.
Big Sandy R.
Ohio River

CHAPTER XVI.

THE USES MADE OF THE PUBLIC LANDS.

The purchase of Louisiana and the addition to the public lands of the region west of the Mississippi is a fit event at which to pause in my narrative and relate the history of the uses already made of that splendid tract of country which, east of the Mississippi, was given to Congress by the States.

In the dark days of seventeen hundred and seventy-six, when the patriot army had been driven from Canada; when New York was in possession of the British; when Washington had fled up the Hudson river; when Howe was offering amnesty to all who would return to their allegiance, and a revision of the acts of Parliament of which the colonists complained; when the term of service of the militia was fast expiring, and desertions grew more numerous day after day, the Continental Congress took up the task of raising an army to serve through the war, and voted that eighty-eight battalions should be raised by the States. To encourage enlistment, twenty dollars were ordered to be given to each non-commissioned officer and man who would serve through the war, and to every man, from colonel down to private, a land bounty, according to his rank. Where the land was to come from no one undertook to say, for it was a question whether Congress owned an acre on the face of the earth. The cost of getting it was to be made a war expense and, like every other war expense, was to be borne by the States. There were, indeed, even at that early day, men who believed that the Congress did own land; who held that there was a vast public domain out of which the promised bounty could in time be made good. These men admitted that the moment the colo-

nies threw off allegiance to Great Britian, the moment they gave their declaration of independence to the world, that moment they became free, sovereign, and independent States, and, as such, succeeded to all the rights, privileges, and immunities ever enjoyed, and to all the lands ever owned by the Crown within their boundaries. But that any colony had ever been bounded by the South Sea, or even by the Mississippi, they denied emphatically. The country beyond the mountains had, they claimed, been discovered by the French, had been explored by the French, had been held by the French till, by the treaty of 1762, France made over to England so much of it as lay east of the Mississippi river. Even then the cession was made not to the colonies, but to the King, a fact which the King recognized when, in his proclamation of 1763, he drew a line around the head-waters of the rivers flowing into the Atlantic and forbade his governors to suffer a colonial settler to cross it. All the back country, all the territory west of the mountains, was therefore, at the time of the Declaration of Independence, Crown land without the colonies, and, as such, became by the Declaration the common property of the United States. This, answered the men who held the opposite opinion, is a bold and novel construction. The proclamation did indeed establish such a line. The proclamation did indeed declare that lands west of it were reserved "under the sovereignty, protection, and dominion" of the King. But the proclamation also declared that the reservation was "for the use of the said Indians," that it was "for the present," and "until our further pleasure be known." It was, then, not a restriction on the territorial limits of the colonies, but an instruction to the governors concerning the time, place, and manner of making grants. That it could not have been a restriction on the limits of colonies is plain, for it applied to Pennsylvania, whose western boundary was definitely fixed by a proprietary grant that could not be changed by proclamation. The ancient charter boundaries of the colonies are not impaired in the slightest degree by the proclamation of 1763, and now that they have become sovereign States, the restriction is removed and their jurisdiction once more extends to the Mississippi.

In the dispute which thus arose, Congress was early involved. Before the Declaration of Independence was six weeks old a petition for a new State beyond the mountains was on its way to Philadelphia. It came from the region around the source of the Ohio, a region claimed alike by Pennsylvania and Virginia, and begged Congress to treat the people as settlers on public lands and form them into a commonwealth. The claims set up by Pennsylvania and Virginia to their country had, they declared, overwhelmed them with frauds, impostures, violences, depredations, feuds, animosities, discords. The soil was rich. The people many. Twenty-five thousand families, they asserted, were settled in the region. Yet they could not be rich, flourishing, and happy if made dependent on Pennsylvania or Virginia. They prayed, therefore, that Congress would make their country a separate State, give it the name of "The Province and Government of Westsylvania," and admit it into the Union as the fourteenth province of the American Confederacy.*

What was done with the petition can never be known, for a year passed away before any record was made on the journals of Congress concerning the Western lands. A plan of government was then being framed. Propositions of all sorts were being offered, and among them was one which soon became part of the eighth article of Confederation. This was the rule for raising revenue. It provided that the cost of the war should be paid from a common treasury; that the treasury should be supplied by the States; that the States should contribute in proportion to the value of the surveyed and granted lands within their limits; and that the value of these lands should be determined in such manner as Congress might

* A manuscript copy of this petition was discovered by Mr. F. D. Stone, of the Pennsylvania Historical Society, among the papers of Jasper Yeates. The boundary of the proposed State was: "Beginning at the Eastern Bank of the Ohio, opposite the mouth of the Scioto, & running thence in a direct Line to the Owasito Pass, thence to the top of Allegheny Mountains, thence with the Top of the said Mountains to the northern limit of the purchase made from the Indians in 1768, at the Treaty of Fort Stanwix, thence with the said Limits to the Allegheny or Ohio River, and thence down the said River as purchased from the said Indians at the said Treaty of Fort Stanwix to the Beginning."

direct. No sooner was it accepted * than the opponents of the landed States moved † that the Legislatures be requested to lay before Congress a description of the domain claimed by each, and a summary of the grants, the treaties, the proofs on which the claims were founded.‡

The motion was promptly voted down. Thereupon it was moved that the United States should have sole power to fix the western limits of such States as claimed to the South Sea, and to dispose of lands beyond this boundary for the benefit of all. This, too, was voted down. But the friends to limitation were not discouraged, and a third time came forward with a motion. They now asked that sole power be given to Congress to fix the western limits of States claiming to the Mississippi or the South Sea, and to lay out the land beyond these limits into separate and independent States as fast as the number and wants of the people required. Again they were defeated, and with this, for the time being, they stopped.#

So persistent an attack alarmed the land-owning States. They in turn took the offensive, and a few days later ‖ added to the articles of Confederation the provision that no State should, without its consent, be stripped of territory for the benefit of the United States. In this form the articles went out to the States.^ Some ratified promptly; some hesitated. Some accepted them as they were; some proposed amendments; and among the amendments were three which bore directly on the ownership of the Western territory. Maryland demanded that power be given to Congress to appoint a Board of Commissioners to fix the limits of States claiming to the Mississippi. Rhode Island asked that the title to what had once been crown lands should go to the United States; the jurisdiction to remain with the States in which they were situated. From New Jersey came a long communication to the same effect. Again the landed States rallied; again the

* October 14, 1777. † October 15, 1777.

‡ The States having claims to Western lands were Massachusetts, Connecticut, New York, Virginia, North and South Carolina, and Georgia. See History of the People of the United States, vol. ii, Map.

October 15, 1777. ‖ October 27, 1777. ^ November 15, 1777.

propositions were voted down,* and an urgent appeal sent to the four hesitating States to ratify.† Georgia did so at once;‡ Delaware# and New Jersey,‖ murmuring and protesting, soon followed. Maryland alone stood out. In a declaration laid before Congress, in the early days of the new year,^ her position was clearly made known. It was, she asserted, against equity, against good policy, to admit the claims to Western land. Landless States ought not to be burdened with the cost of subduing and defending vast tracts of territory from which they were to gain nothing whatever. If the Union were to last, power to fix the western limits of the landed States must be given to Congress. When this was done she would ratify and sign the articles, and not before.

And now the contest began in earnest. On the one hand stood Maryland, deserted by every other State in the Union, yet stoutly contending for a public domain under an absolute jurisdiction of Congress. On the other hand stood Virginia, claiming as her own the whole Northwest, and refusing to give one acre for the public good. Between them stood New Jersey, Delaware, Rhode Island. They would not go so far as Virginia, for they longed to see the Western lands made a source of Federal revenue. They would not go so far as Maryland, for they did not want new States added to the Union, nor jurisdiction over the West given to Congress.

Her declaration made, Maryland followed it up with instructions to her delegates, forbidding them to sign the articles till the amendment asked for in 1777 was added.◊ Virginia retaliated; opened a land-office; offered farms beyond the mountains at forty pounds, Virginia currency, the hundred acres; and roused the anger of the men who in 1776 denied her authority, and petitioned Congress to form the State of

* Journals of Congress, June, 1778.

† July 10, 1778.

‡ July 24, 1778.

February 22, 1779. On February 23, 1779, the delegates presented two resolutions passed by the Delaware Legislature concerning the Western lands.

‖ November 25, 1778. For the protesting letter, see Secret Journals of Congress, January.

^ Passed December 15, 1778; presented January 6, 1779.

◊ Passed January 6, 1779; presented May 21, 1779.

Westsylvania. Her land sales were to begin in October, but in September* memorials begging Congress to stop the sales came up from the Western country.†

Virginia protested against the reception of the papers; but they were received, committed, and reported on. The report suggested that Virginia be urged to close her land-office, and that all States having Western lands be asked to make no grants while the war lasted. A motion to this effect was thereupon made by Maryland, was carried, and in the closing days of the year called out a remonstrance from Virginia. The tone was strong, the language was high, yet it showed, in a manner not to be mistaken, that Virginia was giving way. She would not cede her territory; she would not suffer her claims to be reviewed by Congress; but she would listen to any reasonable proposition for removing the ostensible cause of delay in completing the ratification of the articles of Confederation. That cause, however, was removed by New York.

The State of New York was then represented in Congress by Philip Schuyler and Robert Livingston. They had recently been elected, and had just taken their seats. Some weeks before presenting his credentials, Schuyler had written a long letter to Congress on the subject of a peace with the Northern Indians, and the report of the committee on his letter he now persuaded Congress to take up. While it was under consideration a Maryland congressman moved to amend it. Determined as ever to secure the Western country for the United States, he proposed to add the declaration that Congress was ready to receive any lands the Indians might be willing to cede, reserving to any State its right to a prior claim. The New York delegates instantly moved to add that such cession should be for the benefit of the State having the prior right. Both motions were lost; whereupon the Maryland delegate moved that one condition of the peace be that

* September 14, 1779.

† One bore the name of William Trent, who signed in behalf of Thomas Walpole and the members of the Grand Company. The other was signed by George Morgan, in behalf of those who lived on the tracts called Indiana and Vandalia.

the Indians should neither cede nor sell any land except to the United States, or by consent of Congress. This, too, was lost; and, two days later, Schuyler, having obtained leave of absence, hurried back to Albany.

At Albany he found the Houses in session, and to them he gave a long account of what had taken place in Congress. He told them of the motion of the Maryland delegate, of the good fight he made against it, and of its rejection. He told them that defeat did not end the matter; that a few days later he was shown another resolution to be moved on the first opportunity; that this resolution provided that all the old Crown lands within the limits of any State should be considered as the property of the United States, and disposed of for the common good. He told them that when he protested against such an unjust measure he was answered that the landed States must submit to it, or accept a reasonable western limit; that when he asked what was a reasonable western limit, a map was produced with the boundary marked upon it; that for Virginia, the two Carolinas, and Georgia this boundary was the Alleghany Mountains, or at least the Ohio and the Mississippi; and for New York, a line from the northwest corner of Pennsylvania, through the lakes and the St. Lawrence to the parallel of forty-five degrees. He asked that the Legislature would instruct their delegates in Congress what to do. The Legislature considered the letter for a few weeks, and then ceded to the United States all claims of New York to the region west of the present western boundary of the State.*

The struggle for the ownership of the Western Territory now became one of absorbing interest. Failure to settle the boundary dispute between Pennsylvania and Virginia had filled the people dwelling west of the mountains with doubts as to whom they should pay taxes, as to whom they owed allegiance, as to whom they should look for titles to their farms, and forced them, in self-defence, to again take up the new State movement.† Once more the men of Kentucky denied the

* February 19, 1780. Laws of New York (Jones and Varick), pp. 53, 54.

† "Mr. Adams was with me the other day, who seems greatly concerned about

jurisdiction of Virginia; charged her with selling land and not requiring residence thereon; with taxing them when enrolled in the militia; with administering no justice; with enforcing no law; with compelling them to swear allegiance to her after they had sworn allegiance to the United States; and in a long petition asked to have their country made a State and admitted into the Union.* Thomas Paine wrote in their behalf, and in his pamphlet "Public Good" labored hard to prove that Virginia did not own one acre beyond the mountains.† Even Pelatiah Webster was enticed away from his favorite study of Free Trade and Finance to attack Paine's pamphlet and instruct his countrymen on the best use to be made of the Western lands.‡

Congress, gathering up the Maryland Declaration, the Virginia Remonstrance, and the acts of cession of New York, sent a copy of them to each State.# Maryland was urged to sign the articles of Confederation; the land-owning States were asked to cede Western territory. A solemn promise was given that land so granted should be used for the common good; that it should be settled and formed into distinct republican States; that the States should be admitted into

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the progress of the new State; he informs me that a number of persons over the river, who had signed the Petitions now in your hands, have been prevailed upon to vote for a new State, and he informs me that there is to be a meeting at Coln Cooks the 25th, if I mistake not, of June, in order to take the sense of the people largely." Alexander McClean to Thomas Scott, Redstone, May 31, 1780. History of Washington County, p. 232.

* Papers of Old Congress. The petition, dated May 15, 1780, is printed in full in Roosevelt's The Winning of the West, vol. ii, pp. 398, 399.

† Public Good, being an Examination of the Claims of Virginia to the Vacant Western Territory, and of the Right of the United States to the same, etc. By the author of Common Sense. Philadelphia, 1780.

‡ Webster urged the States to cede the land and Congress to hold the ceded territory till the adjoining country was fully settled. Then he would have townships, six, eight, or ten miles square, laid out in tiers contiguous to the settled country, and sold at auction for not less than one dollar the acre. When the first tier of townships were sold the second should be laid out. The township six miles square, the arrangement in tiers, the minimum price of a dollar the acre, and sale at auction, were, a few years later, adopted. An Essay on the Extent and Value of our Western Unlocated Lands, and the Proper Method of disposing of them, so as to gain the greatest Possible Advantage from them. Pelatiah Webster. Philadelphia, 1781.

September 6, 10, 1780.

the Union, and have all the sovereignty, freedom, and independence enjoyed by the thirteen. * Connecticut complied at once.† Virginia soon followed. ‡ Maryland instructed her delegates to sign,# and on March first, 1781, the articles of Confederation went into force.

The cession of New York was full and free from conditions. Connecticut gave the soil, but not the jurisdiction. ‖ Virginia reserved Kentucky and demanded to be guaranteed its possession. To accept on such terms seemed impossible, and Congress bade a committee report what should be done. In November the report was made,^ but it was not entered on the journals till the following May. The committee approved the cession by New York, advised Congress not to accept that of Virginia, and suggested that when the Western territory was acquired it should be cut up into States not more than one hundred and thirty miles square, that the States be laid out in townships six miles square, and that in them be located the bounty lands promised to the officers and soldiers.◊ A whole year passed away before the matter was considered; but public interest was not suffered to flag. Another pamphlet from Thomas Paine proved that to the territory west of the mountains Virginia had no valid claim.‡ Again a petition from Kentucky called on Congress to form a Commonwealth beyond the Alleghenies and admit it into the Union.‡

About the sources of the Ohio the old scheme for a new State was again revived and urged with fresh vigor. The final settlement of the boundary dispute, the near approach of the day when the line would be run, taxes gathered, and

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* October 10, 1780.

† October 12, 1780.

‖ This cession was not accepted.

^ November 3, 1781.

‡ January 2, 1781.

February 12, 1781.

◊ May 2, 1782.

‡ Plain Facts: being an Examination into the Rights of the Indian Nations of America to their Respective Countries, and a Vindication of the Grant from the Six United Nations of Indians to the Proprietors of Indiana against the Decision of the Legislature of Virginia, together with Authentic Documents proving that the Territory Westward of the Allegheny Mountains never belonged to Virginia, etc. Philadelphia, 1781.

‡ Thomson Papers, August 27, 1782. Collection of the New York Historical Society for the year 1878, pp. 145–150.

law enforced, led many to favor the idea of emigrating and founding a new State on the Muskingum.* With this in view, anonymous letters were written,† handbills passed about, and a day chosen for a meeting of all who favored the scheme at Wheeling.‡ Excited by these appeals, the people, when the Pennsylvania assessors came to take the rates, drove them away.# When surveyors came to run the line, they, too, were attacked and told that the settlers were determined to have a State of their own.‖ So serious did the movement seem, that Pennsylvania found it necessary to enact a law forbidding the erection of a new State within her borders.^ In Congress the petition from Kentucky was bitterly denounced by the delegates from Virginia. The petitioners, it was said, were subjects of Virginia. What business, then, had Congress to meddle? None of the rights of the Crown had devolved on Congress. Congress derived its rights and powers from the Confederation. All Crown rights and all Crown property had devolved on the States. They were answered, and answered with spirit; but no action was taken till Theodoric Bland, a Congressman from Virginia, moved that the cession of his State be accepted. His motion was sent to a committee, and in June the committee recommended ◊ that the old report of 1782 be acted on before the new motion of Mr. Bland. It was thereupon resolved to do so, and so much as concerned Virginia was sent to a committee of five. Well knowing what the recommendation would be, Bland the very next day made a new motion which he intended should be embodied in their report. This was that when the cession had been accepted, a huge tract of it should be cut into districts not more than two degrees of latitude by three degrees of longitude; that each district should be parted into townships and, when its population numbered twenty thousand souls, be admitted into the Union as a State. Ten thousand acres out of

* General Irvine to General Washington, Fort Pitt, April 20, 1782.

† Deposition of H. H. Brackenridge, 1782, accusing Dorsey Pentecost of writing the letters.

‡ General Irvine to General Washington, Fort Pitt, April 20, 1782.

Christopher Hays to President Moore, September 20, 1782. Pennsylvania Archives, vol. ix, p. 637.

^ Act of December 3, 1782.

‖ Ibid., Pennsylvania Archives, vol. ix, p. 637.

◊ June 4, 1784.

every hundred thousand were to be kept by Congress, and the proceeds used to build forts, found academies and seminaries, and, if possible, build and equip a navy. With the rest was to be paid the arrears due to the soldiers then serving in the army; the arrears due to those who had served in the army; the arrears due to the wives of soldiers who had died; the commutation and the bounty promised under the ordinance of 1776. When Secretary Thomson had finished reading the motion, Congress sent it to a committee, and nothing was ever heard of it again.

But the land question was not neglected. Before the month of June ended, Congress took up the report of the Virginia committee, listened to the protest of New Jersey against accepting the Virginia cession, and received a petition from two hundred and eighty-six officers of the Continental army. The army was then at Newburg. The Quartermaster-General was Timothy Pickering, and with him the petition and the plan which lay behind it seem to have originated. The paper set forth that the signers understood there was, beyond the Ohio, a tract of land to which no State made any claim. This tract they believed was bounded by Lake Erie, Pennsylvania, the river Ohio, a meridian twenty-four miles west of the mouth of the Scioto river, and by the Miami of the lakes. Within it they hoped Congress would now lay off their bounty land, make it a colony, and, in time, admit the colony into the Union as a State. With the petition came a letter from Washington. Whether the land asked for belonged to any State he did not know. But this he did know: that it would be well to have the Northwest settled, and that the petitioners were the very men and the present the very time to settle it. They asked, however, what could not be given. Some of the region desired belonged to Connecticut; the rest was owned by Virginia, and did not pass under the authority of Congress till March of the year following.

The report of the committee on the Virginia cession, so often laid aside, was now taken up in earnest. As it was about to be considered for the last time,* Carroll, of Mary-

* September 13, 1783.

land, moved to postpone it, and consider a motion of his own instead. The United States, he maintained, owned the Western lands. These lands were needed to pay bounties promised to the soldiers and to lessen taxation borne by the people. A committee ought, therefore, to be appointed to report on the amount of territory the United States possessed; on the best place for making one or more States; and on the establishment of an office for the sale of land. Once more Congress refused to change its policy; once more it refused to touch the land till the States made acceptable cessions, and resolved that the cession of Virginia would be acceptable when the required guarantee of her territory was stricken out. And now Virginia gave way. The objectionable condition was repealed;* a new offer was made and accepted, and on March first, 1784, the deed was, in the presence of Congress, signed, sealed, and delivered by the delegates.

The deed bound Congress to fulfil six important engagements: To lay out the area into States, not less than one hundred nor more than one hundred and fifty miles square. To make the States republican, and admit them to full membership in the Union. To confirm the land titles of Frenchmen and Canadians living in the territory, and of the settlers at Kaskaskia and Vincennes. To set apart a tract, not greater than one hundred and fifty thousand acres, for the use of General George Rogers Clarke and his soldiers. To make good, northwest of the Ohio, any deficiency in the lands reserved southeast of the Ohio, for the use of the Virginia troops in the Continental army. To dispose of the rest for the benefit of the States in common.

Not one of these conditions was new. All were in the tender of 1781; all were acceptable to Congress. Some, indeed, Congress had already begun to carry out. For six months past committees had been busy with a plan for the temporary government of the Northwest territory, and on the very day the Virginia delegates signed, sealed, and delivered their deed Congress for a second time heard the committee's report. As it came from their hands† the plan applied to all

* January 2, 1781. † March 1, 1784.

the territory "ceded or to be ceded" by the States, from the parallel of thirty-one degrees on the south to the boundary of British America on the north. This it parted into States; named ten of them northwest of the river Ohio; provided for a temporary and a permanent government; laid down the principles on which the governments were to rest; abolished slavery after 1800; and denied citizenship to any man who held a hereditary title. But when the plan took shape as an ordinance some changes appeared.* It still applied to all the Western territory, ceded or to be ceded. But the names of the States were gone. The prohibition against slavery was stricken out. No restriction was placed on men with hereditary titles. Three grades of government were ordered. With the first the numbers of the people had nothing to do. The people of any State, no matter what their numbers, could, whenever Congress consented, meet, mark out the bounds of townships and counties, choose a Legislature, and adopt a Constitution and a set of laws. The Constitution must be that in force in some one of the "original States," and could not be altered. The laws must also be the laws of some one of the original States, and could be altered by the Legislature.

The government of the second grade began when twenty thousand free inhabitants dwelt on the soil. Then, if Congress consented, a convention might be called, a Constitution might be framed, and a government of the people's making established. But, in framing the Constitution, seven great principles must be carefully observed: The government must be republican. The State must never leave the Union; never meddle with the primary disposal of the soil by Congress; never tax lands owned by the United States; never tax the lands of non-residents higher than those of residents; be subject to the articles of Confederation and the ordinances of Congress; and bear a part of the Federal debts contracted or to be contracted. During the life of these two forms of government each State was to have the right to send one delegate to Congress, where he could debate, but never cast a vote.

The third grade began when the settlers in the State were

* April 23, 1784.

as numerous as those in the least populous of the original thirteen States. Then for the first time she was to become a member of the Confederation, might send any number of delegates from two to seven, and could cast a vote on any question that came before the Congress. That the purpose of this ordinance might not be misunderstood, it was plainly declared that every one of its provisions should be made a charter of compact; that the compact should be between each State and the United States; that it should be in force the moment an acre of land was sold in the State, and thenceforth should be unchangeable save by consent both of Congress and the State. During more than three years the ordinance had a place in the statute-books as a law; yet, during that time, no attempt was made to execute the law. No State boundary was ever marked out. No authority was ever given to any band of settlers to adopt a Constitution. Once, indeed, an application was made. Once, indeed, some citizens of Pennsylvania petitioned for leave to buy land and found a State beyond the Ohio river. But leave was refused; for the government they proposed to set up was military in form, while the government Congress was pledged to establish must, they were told, be republican in form.*

Having thus decided on a plan for the government of the new States, Congress now went on to consider a plan for the sale of land in the new States. The committee charged with the work were prompt, and in May an "ordinance for locating and disposing of land in the Western territory" was read a second time.† A vote was not reached; further consideration was put off, and the whole matter neglected for a year. When read the second time, the ordinance provided that after the Indian title had been extinguished and the domain laid off into States, the States should be divided into "hundreds," and the "hundreds" into "lots." A "hundred" was to be a square ten geographical miles on each side, and one hundred geographical square miles in area. A "lot" was to be one geographical square mile in area, and one hundred, duly num-

* The petition is to be found in Papers of Old Congress, vol. ix, No. 41.

† May 10, 1784.

bered, were to be contained in a "hundred." There were to be surveyors for each district, and registers for each State, responsible to Congress. The price of land was not determined, but it was to be paid for in loan-office certificates, reduced to specie value; in certificates of liquidated debts of the United States; and in military warrants issued under the old ordinances of Congress.

At the foundation of the plan lay the principle that no land was to be sold till it had been surveyed, and no survey made till the Indian title had been extinguished. To extinguish the Indian title, therefore, was most important; and, while the plan was yet under debate, commissioners were appointed to treat with the Indians. The first treaty was made with the Six Nations at Fort Stanwix in the autumn of 1784.* In it the Indians drew a line from Lake Ontario to Lake Erie, from Lake Erie to the north boundary of Pennsylvania, and along the Pennsylvania boundary to the Ohio.† To all the land west of this line they declared their title extinguished. But Congress had yet to deal with the actual dwellers on the soil—with the Wyandots, the Delawares, the Chippewas, the Ottawas—who acknowledged no right in the Six Nations to deed away their lands. The commissioners were therefore bidden to treat with them, and did so at Fort McIntosh in 1785.‡ In that treaty the sachems drew a line up the Cuyahoga river from Lake Erie to the portage, westward across Ohio to the Maumee, down the Maumee to the lake, and back to the Cuyahoga. All within these bounds was Indian country; all east, south, and west was ceded to the United States.

The Indian title having been thus extinguished, Congress went seriously to work on the plan for selling the land. The report of 1784 was taken up, debated, amended, and on May twentieth# the first ordinance for the sale of public domain

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* October 22, 1784.

† From Johnston's Landing Place, on Lake Ontario, southerly to the mouth of Buffalo Creek, on Lake Erie, keeping four miles south of the carrying path between the lakes. Thence the line ran south to the north boundary of Pennsylvania, then west and south along the boundary to the Ohio.

‡ January 21st.

May 20, 1785.

became law. Then the geographical miles had given place to English miles; the hundreds to townships; the lots to sections, and the foundation of the present land system was laid.

No land was to be sold until it had been surveyed, and when surveyed was to be parted into square pieces, bounded by meridians and parallels of latitude. The largest square was to be six miles on each side, was to contain thirty-six sections, and was called a township. The smallest piece was to be one mile on each side, was to contain six hundred and forty acres, and was called a section.*

The townships were to be arranged one over the other in a north and south direction, and numbered from south to north. To these tiers was given the name of ranges. The geographer was to begin the first range of townships where the Ohio river is met by the western boundary line of Pennsylvania. The second range was to lie west of the first, and touch it; the third west of the second, and the fourth west of the third. When seven ranges had thus been laid out, with township number one of each range resting on the Ohio river, maps of them were to be sent to the Board of Treasury. The Secretary of War was then to draw by lot one seventh of the whole number of townships and keep them for the use of the officers and soldiers of the Continental army. The rest were then to be drawn by lot by the Board of Treasury in the names of the thirteen States.

How much each State should receive was to depend entirely on the quota assigned her in the last preceding requisition. If her quota was one fifth, or one tenth, or one twentieth of the requisition, she was to receive a fifth, or a tenth, or the twentieth of the land.

The drawing over, maps, showing the townships and parts of townships that had fallen to each State, were to be sent to

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* The sections of each township are numbered from one to thirty-six. Number one is in the northeast corner of the township, whence the numbers run west till six is reached in the northwest corner. Section seven is immediately under section six, and the numbers then run east till twelve is reached. Twelve lies immediately under section one, and under twelve is thirteen, whence the numbers once more run westward. Following this plan, thirty-one is in the southwest corner and thirty-six in the southeast.

the loan officer of that State. The loan officer was then to fix on a day and a place of sale at public auction; advertise the sale in at least one newspaper; put up handbills at the court-houses, the chief taverns, "and other noted places" in each county; and continue this for not less than two months and for not more than six before the time of the auction.

When the day came he was to begin by offering some of the land in whole townships, and some in whole sections. If the piece of land were an odd-numbered township in an odd-numbered range, or an even-numbered township in an even-numbered range, he must sell it entire or not at all. Even-numbered townships in odd ranges, and odd townships in even ranges, he might offer in sections of six hundred and forty acres. No bids would be received at less than one dollar the acre, and no credit could be given. The money must be paid on the spot, and must be specie or loan-office certificates reduced to a specie value. There were, however, in each township five pieces of land which the loan officer could not sell at any price, for Congress reserved sections eight, eleven, twenty-six, and twenty-nine, and set apart number sixteen for purposes of education.

While the ordinance was still being debated, copies were sent for criticism to men deeply interested in Western affairs. One is known to have reached Timothy Pickering, who instantly replied. He noticed, he wrote Rufus King, that no provision was made for ministers of the Gospel, nor even for schools and academies. Schools, he thought, should at least be provided for. King was a member of the Grand Committee to whom the ordinance was referred, and when the report was made, both schools and religion were provided for. The central section of each township was to be set apart for the maintenance of public schools, and the one immediately next for purposes of religion. This, it was explained, would serve to induce people of the same religious persuasion to emigrate in bodies. Congress, however, thought not; struck out the township for religious purposes, but suffered that for education to remain.

The ordinance was silent on the subject of squatters, or, as they were then called, intruders, on the Congress lands. But

Congress was not ignorant of their existence, nor careless of their actions. A proclamation had already been put forth against them. Asserting the sole right to regulate trade with the Indians, Congress forbade any persons to settle on lands claimed by the Indians, or take any gift or make any purchase of soil from them. No heed was given to the proclamation, and, of the many charges brought against the whites by the Indians, during the treaty negotiation at Fort McIntosh, the chief was that of entering on and seizing their lands. The Commissioners promised redress, and, before the treaty was three days old, bade Colonel Harmar see to it that every intruder was driven off.* It was high time, for the more reckless and defiant were even then making ready to form a new State. One among them was a man named John Emerson, and by him a broadside was soon sent out to the settlers. In this he denied that Congress could sell the land, denied that Congress could drive settlers off the land, asserted their right to settle, and called for a choice of delegates to a convention to form a constitution for a State. The elections were to be held on April tenth, at the mouth of the Miami, at the mouth of the Scioto, on the Muskingum, and at the house of a well-known intruder named Jonas Menzons. The Convention was to meet ten days later at the mouth of the Scioto.†

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* "Surveying or settling the lands not within the limits of any particular State being forbidden by the United States, in Congress assembled, the commander will employ such force as he may judge necessary in driving off persons attempting to settle on the lands of the United States." Commissioners of Indian Affairs to Colonel Harmar, January 24, 1785; St. Clair Papers, vol. ii, p. 3.

† ADVERTISEMENT.

March 12, 1785.

Notice is hereby given to the inhabitants of the west side of the Ohio river, that there is to be an election for the choosing of members of the convention for the framing a constitution for the governing of the inhabitants, the election to be held on the tenth day of April next ensuing, viz.: one election to be held at the mouth of the Miami river, and one to be held at the mouth of the Scioto river, and one on the Muskingum river, and one at the dwelling-house of Jonas Menzons; the members to be chosen to meet at the mouth of the Scioto on the twentieth day of the same month.

I do certify that all mankind, agreeable to every constitution formed in America, have an undoubted right to pass into every vacant country and there to form their constitution, and that from the confederation of the whole United

But, before that day came, one of the leaders was in irons, many families were dispossessed, and many more humbly asking leave to stay. Late in March, Colonel Harmar had sent Ensign Armstrong with a force of twenty men to execute the orders of the Commissioners. Armstrong went as far as Wheeling, drove off the intruders at Little Beaver, at Yellow Creek, at Mingo Bottom, at Norristown, at Mercerstown, and opposite Wheeling, and brought to Fort McIntosh an exaggerated report of settlements as far south as the Scioto. Not a bottom, he declared, from Wheeling to the Scioto, but had at least one family. There were, he was assured, three hundred families at the falls of the Hockhocking; as many more were on the Muskingum. Fifteen hundred settlers could be counted on the Scioto and Miami. And still they were coming in forties and fifties. Fleeing from justice, lawless, bold, defiant, they would, unless driven out, fill the country with a banditti whose acts would disgrace human nature.*

His report was sent by Harmar to the President of Congress, and was by him probably laid before that body. Be this as it may, Congress on the fifteenth of June passed an ordinance regarding intruders, instructed the Board of Treasury to stop the settlement of unauthorized persons on the unsold lands of the United States; gave any two of the Commissioners of the Treasury power to call on the Secretary of War for troops to drive off squatters; commanded the Secretary of War to march troops wherever the Commissioners wished; and, in a proclamation, warned persons already there to remove at once with their families and their goods.† By this time a second letter from Colonel Harmar had reached Congress.‡

States, Congress is not empowered to forbid them; neither is Congress empowered from that confederation to make any sale of the uninhabited lands to pay the public debts, which is to be a tax levied and lifted by authority of the Legislature of each State. JOHN EMERSON.

* St. Clair Papers, vol. ii, pp. 3, 4.

† Journals of Congress, June 15, 1785.

‡ "The Honorable the Commissioners of Indian Affairs, previous to their departure, left me instructions to drive off all surveyors or settlers on the lands of the United States, in consequence of which a party has been detached who drove them off as far as seventy miles from this post. The number lower down the river is immense, and unless Congress enters into immediate measures it will

In it he again urged them not to suffer the squatters along the Muskingum bottoms to go unmolested. The warning was heeded; an order was passed commanding him to take his post on the Ohio anywhere between the Miami and the Muskingum; * and in September a force set out to build Fort Harmar at the mouth of the Muskingum river. As they passed down the Ohio valley they burned every cabin they saw, and drove the settlers into Kentucky and Virginia. A second detachment, bent upon a like errand, went further yet and put up Fort Finney at the mouth of the Great Miami. But the intruders were not overawed. Year after year they returned, year after year they were driven away. In the summer of 1786 numbers of men were found twenty miles north of the Ohio staking out claims and establishing tomahawk rights by blazing trees.† In 1787 twelve cabins were burned and crops destroyed at Mingo Bottom. When Harmar made his tour through the Northwest during the summer of that same year he found at La Belle Fontaine, at Grand Ruisseau, at Cahokia, at New Design, settlements where not one man had any legal title to the soil. Copies of the proclamation which he scattered among them created great alarm, and they sent back with him an agent laden with petitions to Congress.‡

Having passed the Land Ordinance of 1785, Congress lost no time in enforcing it. Indeed, before a week passed, thirteen surveyors, one from each State, were chosen to lay out the ranges. Their orders were to go to the north bank of the Ohio river, find the point due north of the western end of the southern boundary of Pennsylvania, and there begin a "geographer's line," running due west across the territory. Having obtained some soldiers from General Harmar, the party set out, found the point, and ran the line due west over the Ohio, setting up a post every six miles to mark the townships'

be impossible to prevent the lands being settled. . . . It is out of my power to sweep them further than the distance of one hundred and twenty, or one hundred and fifty miles from hence." Harmar to Secretary of War, June 1, 1785; Harmar Manuscripts, St. Clair Papers, vol. ii, p. 6.

* Journals of Congress, 1785.

† Harmar to Secretary of War, July 12, 1786.

‡ Harmar to Secretary of War, November 24, 1787; St. Clair Papers, vol. ii, pp. 30, 31.

corners. The "geographer's line," as it is still called, was forty-two miles long, for the law provided that no more than seven ranges should be laid out. The end of the line reached, the party turned due south and made for the Ohio. Little more was done that year, for the Indians showed signs of hostility. But so much had been done that in the spring of 1787 the Board of Treasury was instructed to report a plan for selling the land already surveyed. The report was made in April, and a new ordinance passed. The Secretary of War was still to draw one seventh to be reserved for the Continental line. Drawings were still to be made in the names of the States. But the loan officers were no longer to act as land auctioneers. The townships, after being advertised in one paper in each State for five months, were to be sold at auction at the place where Congress sat, and Congress then sat at New York. The lowest price was still one dollar, but only one third was to be paid down. The rest might be paid after three months.

The passage of a new ordinance for the sale of land was speedily followed by another for the government of the people who should buy the land. Proceedings leading to this were begun by James Monroe, and sprang directly from what he heard and saw during a short trip to the West. Urged by a strong desire to be present at an Indian treaty, he set out in the winter of 1786 for the mouth of the Great Miami. At Fort Pitt he fell in with the Commissioners, and with them started down the Ohio. The weather was cold; the water was shallow; the journey was comfortless and slow. At Limestone, therefore, he gave up the trip, and travelled back to Richmond through Kentucky. The sights which he saw, the men he talked with, the answers given to the questions which he asked on every hand, satisfied him that the West was misunderstood. Much of the land he believed was miserably poor. Great stretches of it along the lakes were not worth cultivating. The plains of what is now Illinois he seems to have considered a desert, without so much as a bush upon it. To cut such a region into ten States would, he thought, be unwise for reasons both economic and political. Some would be all poor land; some all rich land. Some would have no frontage

on the lakes; others would have no frontage on the Ohio. Some would have no navigable rivers; others would have many such streams, and could control them entirely. But what was more important still, the people would be joined by no political ties, by no common interest, to the Federal Government. They would, however, be united by a strong Western interest, and would, when all were admitted to the Union, rule the country. Ten States were too many. Five would be plenty.

Convinced that for these reasons the ordinance of 1784 needed mending, Monroe was no sooner back in Congress than he had the whole question of dividing the Western territory into States sent to a Grand Committee. Two reports were made.* By the resolutions of October tenth, 1780, Congress had promised to lay out the Western lands into States of not less than one hundred, nor more than one hundred and fifty miles square. Virginia had accepted this pledge, had put it in her deed of cession, and had therein solemnly bound Congress to carry it out. When, therefore, the ordinance of April, 1784, was framed, the Northwest territory was cut into States as nearly as possible of the required size, and these, it happened, were ten in number. Before this number could be changed, two things must be accomplished: Virginia must alter her deed of cession; Congress must repeal the ordinance of 1780. Having decided what it was necessary to do, the committee urged that it be done. But, before their reports were even discussed, a new and unlooked-for turn was given to the affair by a motion of Nathan Dane, of Massachusetts.

If there was to be a new division of the territory, there might as well, he seems to have thought, be a government. No such thing existed. The ordinance of 1784 provided, indeed, that there should be civil governments. It laid down the principles on which they should be formed, but it left the time for establishing them to be chosen by Congress in the future. In the opinion of Dane, this time had come; and, thinking so, he asked for a committee to frame a temporary plan of government for the Western States. Monroe was

* Papers of Old Congress. Reports of Committees, vol. xxx.

chairman, and his hand drew the report that was read to Congress a few weeks later.* The Northwest territory ought, the committee said, to be cut into not less than two nor more than five States. Temporary government in each of these should be administered by a governor, a council of five, a secretary, and a court of five judges, all appointed by Congress. When a certain population had been reached, representative government should begin, and a House of Representatives should, with the Governor and the Council, make a Legislature. Then a delegate might be sent to Congress.

Two days† after hearing the report Congress quieted a second of Monroe's fears, and declared that the navigable waters leading to the Mississippi and the St. Lawrence, and all the carrying places between them, should be common highways; that no tax, no impost, no duty, should ever be laid upon them, but that they should be forever free to all the citizens of the United States.

And now the plan went through the delays which in the old Congress attended every important measure. In July it was recommitted;‡ in September it was again reported,# discussed, and postponed. In April it once more came up,^ was read a second time in May,◊ and a day fixed for the third reading.‡ Just a year had then passed away since Monroe presented his rude outline; but the months had not been wasted. Debate and delay did their work, and on the May morning when the Massachusetts delegates called for the final reading, the outline of Monroe had become a well-digested scheme for the government of the Western territory. But the vote was not taken. The Ohio Company had, the day before, presented their petition for a private purchase of land.‖ Consideration was, in consequence, put off, and, before it could be resumed, so many members had left New York to attend the Constitutional Convention at Philadelphia, that Congress, for want of a quorum, did no business till July fourth. The

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* May 10, 1786.
† May 12, 1786.
‡ July 13, 1786.
# September 19, 1786.
‖ September 29, 1786.
^ April 26, 1787.
◊ May 9, 1787.
‡ May 10, 1787.
‖ History of the People of the United States, vol. i, pp. 505–510.

sittings resumed, the ordinance was taken up,* amended and passed, and, in time, became famous as that of 1787.†

Massachusetts meanwhile had made her cession;‡ the offer of Connecticut had been altered and accepted,# so that the ordinance applied to every foot of territory from the "triangle" in Pennsylvania‖ to the Mississippi River; from the Ohio to the boundary line which parted us from Canada.

For Governor of the Territory, Congress selected Arthur St. Clair. As Secretary they gave him Winthrop Sargent. The judges were Samuel Holden Parsons, James M. Varnum,

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* July 9, 1787. † July 13, 1787.

‡ November 13, 1784. Accepted by Congress April 19, 1785. The text of the ordinance will be found in the Journals of Congress, July 13, 1787; in the Statutes at Large of the United States, edition 1845, pp. 50, 51; in Donaldson's Public Domain, pp. 153–156; St. Clair Papers, vol. ii, p. 612; Tucker's History of the United States, vol. i, Appendix; Hough's American Constitutions, vol. ii, pp. 144–148; Life of Manasseh Cutler, Appendix D; Cooper and Fenton's American Politics; Poore's Federal and State Constitutions, Colonial Charters, and other Organic Laws, Part I, pp. 429–432; Albach's Annals of the West, p. 466; Duer's Constitutional Jurisprudence, pp. 512–520; Andrews's Manual of the Constitution, Appendix XIII; Clusky's Political Text-Book or Encyclopædia, pp. 469–472; Preston's Documents relating to American History, pp. 241–250; Tribune Almanac for 1857; Curtis's History of the Constitution, vol. i, p. 302.

For a discussion of the claims to authorship of the ordinance, see Dane's Abridgment of American Law, edition 1824, vol. vii, p. 389; Webster's Speech on Foot's Resolution, January 20, 1830; Debates of Congress, or Webster's Works; Dane's Abridgment, 1830, vol. ix, Appendix, pp. 74–76, where his claim to authorship is fully stated; The Part taken by Essex County in the Organization and Settlement of the Northwest Territory. Essex Institute Collections, vol. xxv, 1888. For the claims of Cutler, see Life, Journal, and Correspondence of Rev. Manasseh Cutler, LL. D., vol. ii, pp. 367, 368; The Legislative History of the Ordinance of 1787, John M. Merriam, American Antiquarian Society Proceedings; The Oration of George F. Hoar, delivered at Marietta, April 7, 1888; Oration of Edward Everett Hale, delivered at Marietta; Address of William F. Poole before the American Historical Association, December 26, 1888. The best statement of the matter is The Ordinance of 1787, by F. D. Stone, Pennsylvania Magazine of History and Biography, 1889.

Deed executed September 13, 1786. Cession made May, 1786. Accepted by Congress, September 14, 1786.

‖ When New York drew her western boundary a triangular piece of land was left, bounded by the west line of New York, the north line of Pennsylvania and Lake Erie. This tract, sometimes known as the "triangle" and sometimes as the "Erie Purchase," was ceded alike by New York and Massachusetts, had an area of 315·91 square miles, and was sold by the United States to Pennsylvania, March 3, 1792, for $151,640.25

and John Cleves Symmes. In July, 1788, these officials, except Judge Symmes, assembled at Fort Harmar, within the range of whose guns the Ohio Company were laying out the town of Marietta. There, on the fifteenth of the month, St. Clair, in the presence of the Secretary, the judges, the garrison, and the handful of settlers, read his credentials and proclaimed the Government of the Northwest Territory established. A county was now marked out. A Court of Common Pleas and a Court of Quarter Sessions were opened, and a code of laws made public.

To make the laws public was no easy matter, for no such thing as a printing press could be found nearer than Pittsburg or Lexington. Copies were therefore written out in long hand and posted wherever it seemed likely they would be seen by the largest number of people. The man who pulled down such a copy was to be put in the stocks for three hours, fined the cost of replacing it, and shut up in the jail till the fine was paid. A like punishment awaited those who defaced a proclamation of the Governor, or destroyed a notice of the banns of matrimony, or the description of a stray cow. The whole Criminal Code as framed by St. Clair and the judges was based on these principles. No means for the suppression of crime seemed to them so effective as fines, the lash, the pillory, and the stocks. The drunkard was fined five dimes for the first offence, a dollar for the second, and, if he could not pay, sat in the stocks for one hour. The forger stood in the pillory for three. Thirty-nine stripes were allotted to those who robbed a house, or broke into a shop, or bore false witness against their neighbors. Were the burglar armed, he was to suffer, in addition, the loss of all his property, and spend forty years in jail. The common thief must give up twice the value of the goods he stole; should he have no property, the Sheriff might sell his labor for seven years. To burden the community with the support of the criminal formed no part of the Governor's policy. Long imprisonment for debt was unknown. On the second day of the next session after commitment, the debtor must be again brought into Court. Should he still be unable to pay, the creditor might have him for a term of years: seven, if a bachelor under forty; five, if a married man under

thirty-six. Should the creditor refuse to take him, the debtor went free. Liberty obtained in any other way was, in the eye of the law, to be ascribed to the negligence of the Sheriff, or the weakness of the jail, or the help of persons outside. Were the Sheriff to blame, he must take the place of the escaped offender, assume all the debts, and pay all the fines for which the criminal was imprisoned. Were the jail at fault, the debts and fines were assessed on the county. Did some one other than the Sheriff have a hand in the escape, he became heir to the sentence imposed on the fugitive. He received all the lashes; he stood in the pillory; he sat in the stocks; or, if the sentence was that of death, stood for hours under the gallows with a rope about his neck. Children who disobeyed their parents, servants who disobeyed their masters, might, if a justice of the peace approved, be sent to jail till, in the language of the law, they were humbled. For a child who struck a parent, or a servant who struck a master, the law decreed ten stripes. Cursing, swearing, and lewd speaking were forbidden, not punished. In strange contrast with the severity of the code in general was the mildness of one law in particular. It was taken bodily from the Kentucky statute-book, and contained a list of crimes at that time only too prevalent in frontier communities. Whoever, it prescribed, on purpose, or of malice, by lying in wait, should unlawfully cut out or disable the tongue, put out an eye, slit or bite off the nose, the ear, the lip, or cut off or disable any limb, or member, or on purpose pull or put out an eye while fighting, should be imprisoned not more than six months, or fined not less than fifty dollars. Were the fine not paid, the Court could sell the offender to service for five years, the buyer to provide food and raiment. Selling to service for a term of years was quite legal, for the ordinance of 1787, while it prohibited negro slavery, expressly provided for slavery in punishment of crimes.*

Some of these laws were taken, as the ordinance provided all should be, from the statute-books of the States, and for this purpose the favorite States were Massachusetts, Connecti-

* "Article VI. There shall be neither slavery nor involuntary servitude in the said territory otherwise than in the punishment of crimes whereof the party shall have been duly convicted."

cut, and Kentucky. But others seem to have been made by the Governor and Judges. They were, therefore, null and void, and, had Congress done its duty, would have been set aside.

The passage of the ordinance was quickly followed by the cession of the strip owned by South Carolina,* by the tender of the region claimed by Georgia, † and by a great demand for land. Before January first, 1788, one million five hundred thousand acres had been sold to the Ohio Company,‡ three millions and a half to the Scioto Company, one million more to John Cleves Symmes, and the petitions of Royal Flint and Joseph Parker for two million acres on the Ohio and the Wabash, and one million on the Mississippi and the Illinois, had been rejected.

Within the ranges all sales had stopped, and it seemed not unlikely that many a month would go by before another section would be sold. Congress, in its greed, had overreached itself. To small buyers, men who bought townships or sections, the price was one dollar the acre, in specie, or public securities reduced to a specie value, and one dollar a section for surveying. To Symmes and Cutler the price had been sixty-six and two thirds cents, paid in securities, which, when brought down to the specie value, made the price between nine and ten cents an acre. Buying for a small sum, they could well afford to sell for a small sum, and settlers were soon hurrying to Symmes to purchase for fifty cents an acre, with a year's credit for half, as good land as they could possibly obtain at auction from the Board of Treasury at two dollars an acre, with only three months' credit for two thirds. Symmes, moreover, would sell any amount; the Board of Treasury, not less than six hundred and forty acres, and not that in every township. So long as this went on it seemed hopeless

* Ceded March 8, 1787. Accepted by Congress, August 9, 1787.

† Tender made February 5, 1788. Declined by Congress, July 15, 1788.

‡ From every township sold to the Ohio Company, sections eight, eleven, and sixteen were reserved for the future use of Congress. Section sixteen was set apart for the use of schools, section twenty-nine for the purpose of religion, and an area not greater than two entire townships for the use of a university. The same reservations were made in the purchase of Judge Symmes, save that the university was to receive one township instead of two.

to expect that one section would be sold in the seven ranges. Something must be done, and this something Congress attempted to do* by passing a supplement to the land ordinance of 1785. Lower the price they would not. The most they would do was to go out and seek buyers. The Board of Treasury, therefore, were given authority to travel over the country and sell the land in the seven ranges wherever they saw fit, according to the terms of the ordinance.† That there might be plenty of land to sell, no more was to be drawn in the names of the thirteen States, and no more for the use of the Continental army.

But the Board of Treasury never made an auction trip. The Constitution was ratified; the old Congress expired for want of a quorum; the Board of Treasury went out of existence; the geographer of the United States died; the surveys stopped, and nothing was heard of Western land till the close of May, 1789. Then a member of the House of Representatives for Pennsylvania once more brought up the subject. He told the House plainly that selling land by contract was a great mistake. To form a company to buy a million acres was a hard matter. The true way was to open a land-office in the Territory and sell in such quantity as would suit the settler. There are, said he, a great number of people on the ground ready and willing to buy. More than seven thousand are waiting for land, and land they will have here or elsewhere. They will quit the country and go over the border to the Spanish domain, or they will move into the new Territory and take their farms by force. What then will you do? Drive them off? This has been tried. Troops have already been sent under Colonel Harmar to turn out the squatters. Cabins have been burned, fences have been pulled down, corn patches torn up. But was anything gained? No. In three towns, after the troops were out of sight, the squatters, poorer but as determined as ever, were back, rebuilding their homes and cursing the Government that would neither give nor sell them land. He called, therefore, in their name for a land-office. The House heard him, and appointed a committee to report.

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* July, 1788.

† The ordinance of April 21, 1785.

The report was favorable, and in time a bill to open "land-offices" in the Territory, to provide for the sale of small pieces at a low price, and to give to men then in the Territory the right of pre-emption, was before the House, and remained there until the end of the session. The precedent set up by the old Congress was too strong. Men had been made to understand that there was one price for the small buyer and a very different price for the great buyer, and when, soon after, a petition for permission to purchase on the system of contract came in from Hannibal William Dobbyn, in behalf of himself and some responsible people in Ireland, it was sent to a committee, and reported favorably.

Some objected that Mr. Dobbyn was an alien, and that it was by no means certain that an alien could hold land in the United States. Others did not want any inducement in the form of cheap farms to be held out to foreigners. They ought to be suffered to come; they ought to be made welcome when they did come; but they ought not to be given a premium for coming. And a premium was what the petitioner asked. Citizens of the United States must pay for their land promptly, but Dobbyn offered one third down, one third in seven years, and the rest at the end of twelve. Others objected to selling on petition. If every offer to buy was to come before the House, the members would soon have time for nothing else. There ought to be a uniform system that should not be departed from. The House felt the truth of this, and, having tabled the petition, instructed the Secretary of the Treasury to report on a uniform plan for selling land in the Northwest Territory.

While the Secretary was hard at work on his plan, the land cession by North Carolina was made and accepted; what is now Tennessee became public domain, and a new territory, named the Territory of the United States, south of the river Ohio, was created, territorial government of the first grade established, William Blount made Governor, and all the ordinance of 1787, save the sixth section, declared in force.* The sixth section forbade slavery, and had to be suspended,

* May 26, 1790.

for one of the express considerations of the North Carolina cession was that no law made, or to be made, by Congress should tend to the liberation of slaves.

Two months later Hamilton submitted his report.* Experience, he said, had shown that there were three classes of land-buyers: The individual settler, who wanted a few hundred acres; the speculator, who wanted several thousand acres; the associations of small buyers, wanting great tracts. Land, therefore, ought to be laid out to suit each class. Some tracts should be set apart from time to time to be sold to single persons in parcels of not more than one hundred acres to any one man. Other tracts should be laid out in townships, ten miles square, to meet the demands of speculators. Still others should be sold by special contract, and in any quantity that might be wanted. The price he fixed at thirty cents the acre, payable in gold or silver or public securities. If the security was Government stock, bearing six per cent interest, it was to be rated at par; if the three per cent stock, or the deferred stock, then at half its face value. No credit should be given for less than a township, nor for more than two years, nor without good security, nor for more than three fourths of the price to be paid.

Having heard the report, the House framed a bill in accordance with the suggestions of the Secretary, and sent it to the Senate. The Senate put off considering it; Congress soon rose, and six years went by before the matter of land sales in the Northwest again came up for serious discussion. Five of these were years of Indian warfare, during which it more than once seemed likely that not a settler would be suffered to remain in the Territory. At last, in 1794, at the rapids of the Maumee, Anthony Wayne broke the Indian power and gave peace to the Northwest for seventeen years. The great victory at the Maumee was followed the next year by the Treaty of Greenville. By that treaty the Indian boundary line, drawn at Fort McIntosh, was confirmed. Southward and eastward of this line the Indian title was declared extinguished, and the next year Congress opened the country to settlers. One question

* July 20, 1790.

discussed when the bill was debated was the relative merit of sales in large tracts and in small.

Everybody agreed that the public domain ought to be used to pay the debt of the United States. This can be most quickly done, said the advocates of small tracts, by cutting the land into little areas and selling to men of moderate means. The number of such men is very great. By putting it in their power to buy you will at once attract them by thousands, and so wipe out hundreds of thousands of the debt.

This, said the supporters of sales in large tracts, would be true if the money was paid down at once; but it will not be paid down at once. Small buyers are poor men, and poor men want credit. In place of revenue, you will, by such a system, gain debtors. Men who can make a cash payment must be rich, or at least well-to-do. For the well-to-do a section is none too large; for the rich a township is none too great. Selling in small areas, it was urged, is impartial; the poor and the rich are treated alike. The settler who wants a few acres has them; the speculator who wants thousands can have them by purchasing a number of small tracts. Selling in large tracts is partial; it absolutely bars out the poor. Poor men, it was answered, cannot expect to buy of Government; they must have long credit, and must go to the speculator. If, again, only small tracts are sold, they will be picked here and there. This will shut out the capitalists, who will not be able to get their thousands in one unbroken piece. The result was a compromise.

The manner of selling was next debated. The framers of the bill were for abolishing the auction system and establishing land-offices. This was strongly opposed. Nobody, it was said, would buy without having seen the country. Such a journey was very costly, and no one would make it without the certainty of getting the land he might pick out. But the office system insured no such certainty; indeed, it made fraud possible. The moment the settler had made his bid, a dishonest land agent might give the amount to a speculator. The speculator, knowing the land must be valuable, could safely offer a small advance and secure the section without the trouble and expense of exploring it. An attempt was made to com-

promise. Let there be offices, it was urged, where application can be made for any lot, without naming any price. Let these lots then be offered at public vendue, and let no lot be offered that has not been applied for. This will assure at least one bidder. But the House felt the force of the argument in favor of the auction system, and retained it.

When the President signed the bill, it applied to the land Northwest of the Ohio river, above the mouth of the Kentucky river. By this was meant the region between the Ohio, the Indian boundary line, and the seven ranges. Whatever was not reserved, or already laid out, was to be parted into townships six miles square. Of these, one half, taken alternately, was to be cut up into sections of six hundred and forty acres, and offered some at Pittsburg and some at Cincinnati, and one half, left undivided, was to be sold in quarters at the seat of Government. Townships in the seven ranges, ordered by the ordinance of 1785 to be sold entire, were now to be offered in quarters at Philadelphia and the rest at Pittsburg. In every township the four centre sections were reserved. All sales were to be by public vendue, and no bids were to be taken at less than two dollars the acre. Buyers must deposit one twentieth of the money on the day of sale, and a moiety within thirty days thereafter. This done, a year's credit would be given for the remainder. For cash payment of the whole sum a discount of ten per cent was allowed.

Confident that purchasers would be found, the House at its next session instructed a committee to report on the workings of the law, and heard, with deep regret, that of the millions of acres offered at Pittsburg, not fifty thousand had been taken; that not one acre had been sold at Philadelphia, and that the whole revenue brought to the Treasury was but a trifle over one hundred and twelve dollars.

Men complained that the price was too high; that the terms were too severe; that the surveys were so badly made that it was impossible for a buyer to find his section or his quarter township. The committee recommended a change. They would not lessen the price, but they would have it paid one fifth in thirty days, and four fifths in four annual instalments. The House, however, did nothing, and a year later,

when a petition came in praying for leave to buy at less than two dollars an acre, the prompt answer was, No! The next year, 1799, passed away without bringing to the Treasury one penny from the sale of Western lands; but it brought to Congress, what was better yet, the first Territorial delegate from the Northwest Territory.

The buyers of public land might, indeed, be few, but the settlers were many, and the time had now come when, under the ordinance of 1787, the Territory was ready to enter the second grade and be governed by a Legislature of its own. Since the day when the army of Anthony Wayne defeated the Indians at the Rapids of the Maumee, a stream of population had come pouring into the Territory, pushing up the Miami and Scioto, taking up land, making settlements, and founding towns. Dayton had been started, and Chillicothe and Cleveland. More than two hundred thousand acres had been sold in the seven ranges, a post-road ordered across the Territory, from Wheeling, in Virginia, to Limestone, in Kentucky, and the work of building begun by Ebenezer Zane. His pay was a grant of a section of land, where the "trace" crossed the three great rivers. One section was on the Muskingum, and there he founded Zanesville; another on the Hockhocking, where he founded New Lancaster; the third was opposite Chillicothe, on the Scioto.

Precisely how great the population was in 1798 cannot now be known. The census was taken, but the returns are gone. It is, however, enough to know that in 1798 an election of twenty-two delegates to a Territorial Legislature was ordered, that they met at Cincinnati,* that they chose ten men, from whom, in time, Adams chose five to form a council; and that when they met again in September they elected William Henry Harrison to be their delegate to Congress.

William Henry Harrison was the son of Benjamin Harrison, a signer of the Declaration of Independence, and was born on his plantation on the James river in February, 1773. In 1791 Benjamin Harrison died, Robert Morris became guardian to the son, and the lad, who had begun his studies in

* February 4, 1798.

Hampden Sidney College, went to reside at Philadelphia. By the advice of Morris he determined to become a physician, and for a time served in the office of Benjamin Rush. But the practice of medicine was not to his taste, and he soon applied in person to Washington for a commission in the United States army. The request was granted, and, with some good advice from Washington, and an ensign's commission in the artillery, he set out in November, 1791, for the West. For a while he was stationed at Fort Washington, where the city of Cincinnati now stands. But in 1792 he joined the army of Anthony Wayne, took part in all the Indian campaigns, was thanked for his services in the fight which recovered the field of St. Clair's defeat, was thanked again for his bravery in the great victory at the Rapids of the Maumee, and in 1795 came back to Fort Washington to command the post with the rank of Captain. In 1797 he resigned his commission, was promptly made Secretary of the Northwest Territory by Washington, and a year later took his seat as delegate to the sixth Congress. He was just ending his twenty-seventh year.

The first session of the sixth Congress began on the second of December, 1799. On the sixth Harrison moved a committee to report what changes, if any, should be made in the judicial establishment of the Northwest Territory. The committee was appointed; Harrison was the chairman, and soon brought in a bill, which was sent to the Committee of the Whole. The Committee of the Whole sent it back to the men who framed it, with a call for an expression of opinion on the expediency of parting the Territory into two distinct governments, by a due north line from the mouth of the Great Miami river to the Canadian boundary. In March the committee told the House that such a partition was greatly needed. The distance from the southeast corner to the northwest corner was fifteen hundred miles, and that, in a country so sparsely settled and so little redeemed from native wildness, this distance was enough to make the exercise of the functions of government impossible. The actual number of miles between the most remote places of holding courts was thirteen hundred. To traverse this distance was so difficult that but one Criminal Court had been held in the three western counties in

five years. They had become in consequence an asylum for wickedness. Vile and abandoned criminals went into them. Useful and virtuous men kept away. The committee, therefore, reported a resolution that the Territory be divided by the line proposed.

But the division of the Territory was a matter in which the Governor, as well as the delegate, was much concerned. Each was for it, but each gave very different reasons, and each suggested a very different line. St. Clair wished division in order that the eastern part might be longer in becoming a State. Harrison was for division in order that justice in each might be better administered. St. Clair had then at Philadelphia two warm friends, and to them—James Ross, a Senator of Pennsylvania, and Timothy Pickering, the Secretary of State—he made known his views in full. To Pickering he advocated such a line as would make of the eastern part a Federal State, and pointed out just where the line should run. To Ross he declared that the people were in no wise fit to form a State; that they were too ignorant to make a Constitution; that they were too far from the seat of government to feel the power of the United States; that no ties bound them to the East, where many had left nothing at all but debts; that they had no fixed political principles, and would, as citizens of a State, be as unruly and as troublesome as the people of Kentucky. The prospect of another State as republican as Kentucky was far from pleasing, for Kentucky was even then denouncing the Alien and Sedition Laws, had boldly asserted the doctrine of State Rights, and had just passed the famous resolutions of 1798 and 1799. Mr. Ross, therefore, read with pleasure that the danger of bringing in another such Commonwealth could be avoided by drawing a line due north from the mouth of Eagle Creek. Population enough would then be taken from the eastern part to keep it a Territory for some years to come. Population enough would then be given to the western part to make it a Territory of the second grade.

The wish of St. Clair, however, was not obtained. The House passed a bill with a line from the mouth of the river Miami as the boundary of the Territory. The Senate struck

this out and put in the Indian boundary from a point opposite the Kentucky river to Fort Recovery, and then a meridian to Canada. The territory to the east was still to be called the Territory Northwest of the Ohio. That to the west was called Indiana Territory, and, whatever the population might be, was to have an assembly of not less than seven nor more than nine, appointed by the Governor, who in time was William Henry Harrison. On May seventh, 1800, the President signed the bill.

Three days later he signed a batch of bills, and among them were two more land acts of importance. One related to the new Territory, and this, also, was the work of the delegate. Having started his first reform, Harrison, on December fourth, 1799, began his second. He informed the House on that day that the whole system of selling public lands was bad, and moved a committee to inquire what amendments were needed. The motion was carried; the speaker made him chairman of the committee, and in March, 1800, he reported a bill which passed Congress.

To break away from the usages of the past was hard, and in the new law * were preserved many provisions of the old law which it displaced. The price was still two dollars the acre. The auction system was still retained. Nor would the Government consent to sell less than three hundred and twenty acres. The privilege of buying this amount was not general, and to get it the settler must go west of the Muskingum river. East of that river the smallest quantity for sale was six hundred and forty acres. But all these defects were offset, and more than offset, by the long terms of credit and by the opening of land-offices in the Territory, at Cincinnati, Chillicothe, Marietta, and Steubenville. Each of them was made the place of sale for land lying within certain bounds, and at each on a fixed day in 1800, and for three weeks thereafter, the half-sections were to be put up for sale at auction. The three weeks gone, all unsold lands were to be open for private sale at two dollars the acre and the cost of surveying. One twentieth must be paid down, and within forty days as much more as would

* May 10, 1800.

make one fourth. The rest, with interest at six per cent, could be paid, one quarter at the end of two years, one quarter at the end of three years, and the last quarter at the end of four. For prepayment a discount of eight per cent was allowed. Thus, for the first time in the history of the country, it became possible for a man with a small sum of money to buy a large amount of Government land.

Forty years later, when the Whigs were shouting for "Tip and Ty," the biographers of Harrison delighted to tell the people that, till this act passed, the smallest piece of land the Government would sell was four thousand acres; that Harrison framed the bill, and that to Harrison therefore every Western farmer owed it that he was a happy, prosperous, free, and independent owner of the soil, and not the tenant of a great and wealthy landlord. The story of the four thousand acres is wholly false, but that the passing of the law was due to the efforts of Harrison is strictly true.*

The second land bill, approved by Adams in 1800, related to the territory south of the Ohio. By the letters patent to Oglethorpe, in 1732, the boundaries given to Georgia were the Atlantic Ocean, the Altamaha and Savannah rivers from their mouths to their sources, and lines from their sources due west to the South Sea.† Disputes having arisen between the governments of South Carolina and Georgia over the ownership of the lands between the Altamaha and St. Mary's, the King, in his proclamation of 1763, annexed them to Georgia.‡ By the same proclamation he created the provinces of East Florida and West Florida, and forbade the Governors of any

* Mr. J. P. Dunn, Jr., in his Indiana, a Redemption from Slavery [American Commonwealth Series], p. 283, declares that "Up to this time (1800) the Western lands, by law, were not sold in tracts of less than 4,000 acres." This is a mistake. The ordinance of May 20, 1785, provided for the sale of *sections of 640 acres*. The act of May 18, 1796, sections 4 and 5, provided for the sale of land in townships of 20,480 acres, quarter townships of 5,120 acres, and in *sections of 640 acres* at Cincinnati and Pittsburg. There never was a time, therefore, when a settler could not somewhere buy 640 acres.

† June 9, 1732.

‡ "We have also, with the advice of our Privy Council aforesaid, annexed to our province of Georgia, all the lands lying between the rivers Altamaha and St. Mary's."—Proclamation, October 7, 1763.

colony to dispose of an acre of land, or to allow a man to settle above the sources of the rivers which flowed into the Atlantic. During thirteen years the proclamation was in force. But in 1776, when the Colonies declared their independence and took up civil government, each claimed to exercise jurisdiction over the same extent of territory that had belonged to it before the proclamation of 1763 was issued. Among these States was Georgia, who defined her boundaries as the Mississippi, the Atlantic, the line due west from the source of the Savannah, and the south boundary of the United States.* Having thus asserted her right to the soil, she went on, two years later, to use that right, and in 1785 erected a strip along the Mississippi, to which the Indian title had been extinguished, into Bourbon County.† Hardly had she done this when the old dispute with South Carolina was revived. The claim of South Carolina was that the proclamation of 1763 made the western boundary of Georgia a line joining the sources of the St. Mary's, the Altamaha, and the Savannah rivers; and that all west of such a line reverted, in consequence of the Revolution, to Carolina, from whom it had been taken by the King. Disputes between States were, by the ninth article of the Confederation, to be arbitrated by a court appointed by Congress at the request of one of the States concerned. For such a court South Carolina now applied.‡ The petition was granted, the court named, and the day fixed for the hearing; but the States, before that day came, agreed to settle the matter themselves, and the petition was withdrawn.# True to this agreement, the question of ownership was determined in 1788, and the claims of South Carolina were then formally relinquished.‖

That same year Georgia made a cession of these lands to Congress. The cession was not accepted, and at the next

* Act of February 17, 1783.

† Starting at the mouth of Yazoo river, it went down the Mississippi to thirty-one degrees, and along the thirty-first degree for sixty miles due east. The upper end was fifteen miles wide.

‡ Journals of Congress, vol. x, p. 190.

Journals of Congress, vol. xi, p. 218.

‖ The Commissioners of the two States met at Beaufort and framed a Convention, April 24, 1787; South Carolina ratified this, February 29, 1788.

meeting of the Legislature certain citizens of Virginia, North Carolina, and South Carolina applied for leave to buy land between the Tombigbee and the Mississippi, and three great tracts of land were sold to three companies, named the Virginia Yazoo, the South Carolina Yazoo, and the Tennessee.* The intention of each company, as set forth in its petition, was to pay in Georgia bills of credit. Some of these, known by the nickname of Rattlesnake, were of no value whatsoever. Fearing that this worthless paper might be gathered and tendered, the Legislature sent a committee to the agents of the companies, who agreed that Rattlesnake money should not be offered, and the bill passed. Two years were given in which to make payment. In the House the minority entered a strong protest.

Acting under the law, which said nothing about the kind of money to be received, and having offered paper money in their petitions, the two companies made a part payment in Georgia bills. But, when a tender of the rest was made, the State Treasurer declined to receive it, and, the two years ending, the Governor refused to pass the grant. The Virginia Yazoo Company then withdrew the money paid to the Treasurer. The South Carolina Company brought suit† against Georgia in the Supreme Court of the United States, but the adoption of the eleventh amendment to the Constitution cut short the suit,‡ and left the company to seek redress elsewhere.

Such was their condition when, in 1794,# the Georgia Legislature passed a second act, selling the same land to four companies, named the Georgia, the Georgia Mississippi, the Upper Mississippi, and the Tennessee. The Governor returned the bill, and gave eight reasons. A conference followed. The Legislature struck out the objectionable features, and on January seventh, 1795, the bill was approved. Then the wickedness of the sale came out fast. Of those who voted for it in the House, the majority were found to be concerned in the purchase; of those who voted for it in the Senate, many were

* Laws of Georgia, December 21, 1789.

† Moultrie *et al. vs.* Georgia *et al.*

‡ Hollingsworth *et al. vs.* Virginia, 3 Dallas, pp. 378–380.

December 29, 1794.

likewise found to be moved by corrupt motives. The people all over the State were furious. In county after county the Grand Jury presented the sale as a grievance. A Convention was called, met at Louisville,* received petitions, and bade the next Legislature take up the matter. The Legislature obeyed, and in February, 1796, declared the act had been obtained by fraud and corruption; pronounced it null and void; ordered all records of grants and conveyances under it to be wiped from the books; forbade any others to be recorded; and went in solemn procession to see it burned.

And now the United States for the first time took alarm. The President laid the act before Congress,† who instructed the Attorney-General to examine the title of the United States to the land claimed by these companies.‡ The huge batch of documents# he sent back was referred by the Senate to a committee, and the committee advised negotiation.‖ That the boundary of Georgia was a line from the source of the St. Mary's river to the source of the Ocmulgee and the Savannah, heading all the rivers which flowed into the Atlantic, the committee had no doubt whatever; but, as this line had never been traced, they recommended that a joint commission be constituted to determine it. Meanwhile, Congress should ask for the consent of Georgia to set up a temporary government on the disputed territory similar to that northwest of the river Ohio.△ Having heard the report, the Senate ordered it printed, and the following day adjourned.

The report, however, was not forgotten. Early in the next session the matter was again taken up, and a bill based on the report passed both House and Senate. Two matters were provided for: The appointment of a joint commission to settle the conflicting claims of Georgia and the United States, and the formation of a new territory to be called Mississippi,◊ with

* May 10, 1795.

† February 17, 1795.

‡ Resolution passed March 3, 1795.

Communicated to the Senate, April 29, 1796.

‖ March 2, 1797.

△ Communicated to the Senate, March 2, 1797. Public Lands, vol. i, pp. 79, 80.

◊ The bounds of Mississippi Territory were to be the parallel of thirty-one degrees, the Chattahoochee river, a line due east from where the Yazoo joins the Mississippi, and the Mississippi.

a government of the same sort as that in force in the Northwest Territory, save that slavery was not to be forbidden.* No time was lost in organizing under the act, and ten days after signing it Adams nominated the officials to the Senate. For Governor he chose George Mathews, of Georgia; for Secretary, Arthur Miller, of Connecticut; and for Judges, William Witmore, Daniel Clark, and Daniel Tilton.† The Senate seeming loath to agree to these names, Adams on May second withdrew them, and sent a new list instead. His second choice for Governor was Winthrop Sargent, then Secretary of the Northwest Territory; and for Secretary, John Steele, of Virginia. The Judges were Peter Bryan Bruin and Daniel Tilton. The Chief Judgeship he left vacant.‡ A contest now took place over the confirmation of Sargent, and by one vote was carried in his favor.#

Early in August the Governor, the judges, and many settlers from the Northwest arrived at Natchez. There Sargent proceeded to organize the government, lay out counties, and began an administration short, violent, and disastrous. Sargent was a Puritan. The people he governed were French and Spanish Catholics. That harmony should long continue between them was impossible, and he was soon sending to the Secretary of State descriptions of the people which represented them as worse than the penal colony of Botany Bay. "Diffused over our country," said he, "are aliens of various characters, and among them the most abandoned villains, convicted of the blackest crimes, and escaped from the chains and prisons of Spain. To extirpate these people from our Territory would be a wise policy." Natchez, where, after mass on Sundays, the people indulged in all manner of amusements and excesses, he describes as an abominable place, and suggests that the inhabitants be taught more seemly behavior with the bayonet. Hold-

* Act of April 7, 1798.

† Executive Journal of the Senate, April 18, 1798.

‡ Executive Journal of the Senate, May 2, 1798. June 26, 1798, William McGuire was made Chief Justice.

The vote stood—yeas, eleven; nays, ten. Every Senator from south of the Ohio and Potomac voted no; every Senator from the North voted yes, save Tracy, of Connecticut. Executive Journal of the Senate, May 7, 1798.

ing the Federal doctrine that none but New Englanders were fit to be free, he broke through every law imposed on himself, and established a government for which the term tyrannical is too mild. By one order he decreed that every alien entering the Territory should report to a magistrate within two hours of his arrival at any settled post, or be imprisoned. By another order he created the office of administrator on the estates of decedents, laid down the law for its management, and appointed an officer to fill it. Without the shadow of right he next began to exact fees for his private purse. Every man who took out a marriage license, every man who wished for the privilege of feeding travellers or selling liquors, must pay the Governor eight dollars for the license. Every man who wished to leave the Territory must first get a passport, costing four dollars. Galled by these exactions and by the illegal punishments prescribed by the penal code, the chief men of the Territory met,* and called on the people of every district or "beat" to choose members of a committee to lay their grievance before Congress. The petition thus presented charged the Governor with promulgating laws framed by himself, in direct violation of the ordinance of 1787; with subjecting the people to illegal taxation and exorbitant fees; with exacting excessive fines, and imposing cruel and unconstitutional punishments; and asked that the Territory be raised to the second grade. Congress heard the prayer, declared the odious laws to be null and void,† gave the Territory a Legislative Assembly,‡ and began an examination of the Governor's conduct, which came to nothing.# Against this act Georgia protested most vigorously, for every foot of the Territory belonged, she asserted, to her. But the House replied that, the United States having named commissioners under the act of 1798, and Georgia having done the same, the whole matter might safely be left with them.‖ The three Commissioners for the United States were, the Secretary of State, the Secretary of the Treasury,

* July 6, 1799.

† Annals of Congress, May 9, 1800.

‡ Act of May 2, 1800.

Annals of Congress, May 14, 1800; March 3, 1801.

‖ Report of the Committee of the House, February 28, 1801.

and the Attorney-General.* They were nominated on the last day of December, 1799. They fell, therefore, under Jefferson's rule, that all appointments made after the result of the election was known should be treated as null. But he chose to find another reason for getting rid of them. They were Heads of Departments, and, construing the action of Adams to mean that the Commissioners should be chosen from the Heads of Departments, he removed them and nominated his own Secretaries and Attorney-General in their stead. †

By these men an arrangement was quickly effected, and in April articles of agreement and cession were signed at Washington.‡ Georgia then drew her present boundary on the west, and gave to the United States all lands between it and the Mississippi. In return the United States gave to Georgia a strip just south of Tennessee,# agreed to pay her a million and a quarter of dollars from the proceeds of land sales, agreed to extinguish the Indian title within her limits, agreed to admit the ceded Territory into the Union as a State, when the population numbered sixty thousand souls, and to confirm all grants recognized by Georgia as legal. Georgia on her part consented that five million acres should be set apart to satisfy claims she did not consider legal.

No sooner was the agreement read than the most violent opposition was made to it both in the House and the Senate. One clause provided that, unless Georgia should refuse to ratify, or unless Congress should, within six months, repeal the act of 1800, the agreement was binding. As the session was nearing its end, no time was to be lost, and a motion was at once made to repeal. By a strictly sectional vote it was lost, and, Georgia soon after approving, the agreement became law. The Commissioners meantime went on to perform the second duty assigned them, examined the claims of settlers, received offers of compromise, and in February, 1803, reported. Claimants to land in the ceded territory they divided into two classes: those who were recognized by Georgia, and

* Executive Journal of the Senate, December 31, 1799.

† Executive Journal of the Senate, January 5, 1802.

‡ April 24, 1802. American State Papers. Public Land, vol. i, pp. 125, 126.

This was part of the South Carolina cession of 1787.

those who were not. In the first class were men deriving title from the British Government of West Florida, from Spain, from Georgia, or from occupancy and settlement. In the second class were men who held British and Spanish titles they could not perfect, squatters who had no evidence of title, men who held grants and were not living in the territory when the treaty was made with Spain, and the Yazoo speculators. Both classes had been provided for; one by the express terms of the agreement with Georgia; the other by the reservation of the five million acres. Out of this reservation the Commissioners suggested should be satisfied, first, the claims of settlers not recognized by Georgia, and then, if any land remained, the Yazoo buyers under the act of 1795. The sale under the law of 1789 was utterly ignored. The report was accepted, a bill was passed regulating the disposal of land in Mississippi, a tract was set apart to quiet claims derived from any act or pretended act of Georgia Congress might see fit to recognize, and the foundation laid for one of the most memorable contests in the history of Congress.* In 1804, in 1805, in 1806, in 1807, in 1808, in 1809, year after year, the Virginia Yazoo Company, the South Carolina Yazoo Company, the New England Mississippi Company, the Legislature of Massachusetts † appealed to Congress for relief under the act of March, 1803. But year after year every effort was defeated by John Randolph. He denounced the Settlement Act as a stain on the Statute Book, as a corrupt job, as an infamous piece of legislation forced through Congress by a hired lobby, and declared that all honesty, all purity in government, was gone forever if so gross an outrage on decency was suffered to succeed. Wearied with vain efforts, the claimants carried their case to the Supreme Court, and in 1810, in the case of Fletcher against Peck, obtained a decision in their favor.‡ The Georgia Land Act of 1795 was then declared to be a contract, the rescinding act of 1796 a violation of the contract, and therefore repugnant to the Constitution of the United States. But four years more went by before the contest ended, and Congress

* Act of Congress, March 3, 1803.

† See Memorial, January 4, 1808. See also petition of Governor Sullivan, January 19, 1807.

‡ 6 Cranch, p. 87.

voted eight million dollars in land scrip to quiet the claimants.*

For two years after the settlement with Georgia the ceded territory remained unattached. In 1804, however, it was annexed to and made part of the Territory of Mississippi, which thenceforth comprised so much of the present States of Alabama and Mississippi as lies north of the parallel of thirty-one degrees.†

Great events meanwhile had taken place northwest of the Ohio. Connecticut had given up her claim to the Western Reserve. The land offices had been opened; streams of Germans, Scotch, and Irish had come in from Pennsylvania, and were fast spreading over the military bounty lands; and steps had been taken to admit Ohio into the Union as a State. The ordinance of 1787 provided that out of the Northwest Territory might be made not less than three nor more than five States, and drew the boundary of each of them. But the third Territorial Legislature had scarcely met when a bill came in declaring the assent of the Territory to a change in the boundary drawn by the ordinance, and proposing two new lines of division. The eastern State was to be divided from the middle State by the Scioto river to the Indian boundary, and a line from the Indian boundary to the southwest corner of the Connecticut Reserve. The middle State was to be parted from the western by a line from the Falls of the Ohio to the Chicago river. The bill was a Federal bill, planned to delay the formation of a State, and was, by the Federalists, rushed through the Council and the Assembly on the same day. The minority protested. The people denounced the act, held meetings, chose a committee of correspondence, spread petitions and remonstrances to Congress broadcast over the Territory for signature, and sent two agents post-haste to Washington to oppose the bill before Congress.

Once at Washington, the agents found their work quite easy. The Legislature of the Territory had gone too far. Even the Federalists would not support it, and the bill giving

* Thirteenth Congress, Second Session, chap. xxxix, Act of March 31, 1814.

† Eighth Congress, First Session, chap. lxi, Act approved March 27, 1804, section 7.

assent to a change of boundary was promptly set aside by a vote of eighty-one to five. The petitions and remonstrances meantime had been coming in. These were now sent to a committee with instructions to inquire into the fitness of making the Territory a State, and to report. The committee set to work at once, held many conferences with the Secretary of the Treasury, drew up a report and formed a bill for which Gallatin was largely responsible, advised that an enabling act be passed, that the boundary of the new State be that laid down in the ordinance of 1787, and that a convention of delegates be called to consider the propriety of forming a State government at the present time. To that convention were also to go three propositions of great moment.

As provided by the ordinance of 1787, States made out of the Northwest Territory could lay no tax on lands owned by the United States. Under the act of May tenth, 1800, the Secretary of the Treasury was selling land on five years' credit, and, as the patent was not given till the last payment was made, and as Gallatin held that till the patent was granted the land belonged to the United States, he construed the ordinance to mean that no land sold on credit should be taxed for five years after the purchase. This he believed a wise policy, and a policy that might well be carried further. Buyers were wanted for the public domain, and nothing seemed more likely to bring buyers than a promise that the half-sections and quarter-sections bought from the Government should be free from taxation by Ohio even after all the purchase-money had been paid. Gallatin suggested that the term be ten years, and the committee so recommended. The period of exemption would then be fifteen years. That Congress could exact this from Ohio as a condition of admittance into the Union was never for a moment pretended. It was a proposal, and nothing more. The people were to be free to accept or reject it as they saw fit. If, however, they did accept it, three things were promised them. The people of each township should have Section Sixteen for the use of schools. The State should be given certain salt springs, with the sections they were in, for the use of the people. The Government of the United States would spend on road-making one tenth of the net pro-

ceeds of the sales of public land in Ohio. Some of the roads were to lie in the State. Some were to join her eastern boundary with the tide-waters of the Atlantic. To this plan, as a whole, the House made little objection. But two of the provisions were strongly and bitterly resisted. On the one hand were those who affected to be friends of the men who bought their farms from the Ohio Company, from John Cleves Symmes, from the Connecticut Company, or at auction from the United States, or were settled on the Fire Lands, or on one of the military reservations of the Territory. To ask the new State to go on taxing her present citizens, and exempt for fifteen years the lands of purchasers after June thirtieth, 1802, was, they said, unjust, and would never be listened to. The farms of such men must not be free from taxation one day longer than was necessary to satisfy the ordinance of 1787, and the meaning put by the Secretary on the law of 1800.

On the other hand were those who affected to have at heart the interests both of the new State and the General Government. The West needed settlers. Nothing was more likely to bring settlers than an offer of good land to be paid for in four annual instalments and free from taxation for years. This, again, would be good for the United States; for whatever brought settlers to the West brought money to the United States treasury. The public domain was a trust to be used by the General Government for the payment of the public debt. Money coming from land sales was therefore pledged, and must not be used for any other purpose. To promise to spend one shilling in road-making was wasteful and wrong. These men insisted, therefore, that this provision should be stricken out. The result was a compromise. Each party yielded something. The one agreed that the term during which land should be free from State taxes should be cut down to five years from the day the first payment became due. The other consented that the percentage to be spent on roads should be reduced from one tenth to one twentieth of the net proceeds. These matters settled, the bill was passed and signed.

None of these provisions applied to the United States military lands, nor to the Virginia Military Reservation, nor to the Connecticut Reserve, nor to the land lying beyond the

Indian boundary. That the settlers on these great tracts should be left without some provision, at least, for education seemed unjust. When, therefore, the convention to form the Constitution of Ohio met, and considered the three offers of the Government, the men of Ohio in turn named conditions to Congress. They would agree to lay no taxes on land sold by the United States for five years after the day of purchase. But they would do so provided Congress would spend three per cent. of the net proceeds of Ohio sales in building roads not to, but in the State; provided the title to all school lands was vested in the State and not in the people of the townships; provided that a township should be given Ohio for a seminary in place of the township promised Symmes, but never set apart; and provided that land equal in amount to one thirty-sixth of the Western Reserve, the military lands, the Virginia Reservation, and all that might hereafter be obtained from the Indians, should be vested in the Legislature for the use of schools in such tracts.

When these propositions were put into a bill and the bill brought before Congress they called out some ill-natured remarks from a Pennsylvania member. The Ohio lands were the common property of all the States. Virginia had given them for the common good. They were pledged to pay the revolutionary debt. What right, then, had Congress to put its hands into the common fund, lay hold of a part of it, and use that part for the sole benefit of the people of Ohio? What right had Congress to spend on Ohio roads money which ought to go toward paying the debt of the whole country? Such an act was an assumption of power. It was an act of usurpation. John Randolph answered him, and answered him fully, and the House, without more ado, sent the bill to the Senate, which passed it on to the President, who signed it on the last day of the session.*

When Congress met again, Louisiana had been purchased, and an unknown number of millions of acres of land added to the public domain. When Congress rose again, three petitions for new Territories had been presented and one new Territory,

* March 3, 1803.

that called Orleans, had been made. At the very opening of the session the men of the Illinois country, who hated Harrison and longed for slaves, entreated Congress to cut their country off from Indiana and join it to Louisiana. A month later the people who dwelt about the Mobile, the Tombigbee, and the Alabama rivers, sent in a paper praying for a division of the Mississippi territory. But the only petition that was heard with favor came from the people about Detroit. In the Senate their prayer had many friends, and by them a bill was passed providing for a new Territory in the Northwest. In the House a committee considered and reported against it. The bill would, they said, if passed, open the door for like appeals from all parts of Louisiana and Mississippi. But the House threw out the report, called the Territory Michigan, and came within one vote of passing the Senate bill. At the next session it did pass, and the lower peninsula and part of the upper peninsula of Michigan were cut off from the public domain and made a Territory of the first grade.* In an evil hour Jefferson sent out William Hull to govern it. His qualifications for this post were his revolutionary services, for his career as a soldier in the Continental army had been most honorable and enviable. When the Revolution opened, Hull was a young man of two-and-twenty, just beginning the practice of law. But he instantly quit his profession, raised a company of infantry, and hurried to the help of Washington at Cambridge. Thenceforth no military event happened north of the Potomac but Hull bore a part. He saw Howe evacuate Boston. He marched with the army to New York. He was present in the battle of Long Island, and in the retreat up the Hudson, was wounded in the battle of White Plains, and among the few who escaped capture when Lee so shamefully surrendered in

* The boundaries described in the act are: "All that part of the Indiana Territory which lies north of a line drawn east from the southerly bend, or extreme, of Lake Michigan, until it intersect Lake Erie, and east of a line drawn from the said southerly bend through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States, shall, for the purpose of temporary government, constitute a separate Territory, and be called Michigan." Act approved March 11, 1805. It is clear, from the words "thence *due north*," that part of the northern peninsula was included; yet on no map of the time is this fact indicated.

December, 1776. Having once more joined Washington, Hull was with him in the passage of the Delaware, fought at Trenton and at Princeton, and spent some weeks in the camp at Morristown. From Morristown he was sent to recruit at Boston, and from Boston, in April, 1777, he set out to join St. Clair at Ticonderoga. Driven from Ticonderoga, he retreated through the woods of New York to the army of Schuyler on the Hudson, went with Brooks to the capture of Fort Stanwix, and was with Gates at the surrender of Burgoyne. After the surrender he again returned to Washington, passed the terrible winter at Valley Forge, took part in the pursuit of Howe, fought at Monmouth, and the next winter commanded the advanced posts near New York. For his conduct under Wayne in the glorious capture of Stony Point, Hull was made lieutenant-colonel in the Massachusetts line, and in 1783 led the American troops on their entrance into New York city.

Services so signal deserved and received a signal reward, and when the Territory of Michigan was formed in 1805, Hull was chosen to govern it. For a while he hesitated. He was an old man. Life on the frontier was severe. To go west would cost him many comforts. But his vanity was touched. He accepted, and, with all the speed he could, set out for Detroit, the capital city. From Boston to Detroit the journey may now be made with almost absolute certainty in twenty hours. In 1805 it could not be made with any certainty in twenty days. Every rain that swelled the streams, every drought that dried them, every calm on the lakes, was sure to delay the traveller. The western road then began at Albany. To Albany, therefore, Hull repaired, went up the Mohawk valley to Rome, crossed the portage to Woods Creek, went down the creek to Oneida Lake, down the lake to Oswego river, and down Oswego river to Lake Ontario. A sailing vessel carried him thence to Lewiston. Passing around Niagara Falls to Black Rock, he once more took boat and sailed up Lake Erie to Detroit. It was on the first of July that he came in sight of the place and beheld from the deck of the ship a scene of utter desolation. No troops were drawn up to receive him with military honors. No crowd gathered at the landing place to bid him welcome. There were no salutes, no

cheers, no triumphal entry. Indeed, there was no city. Three weeks before, a fire swept over Detroit and, save a warehouse and a bakery, not a building remained. Some of the inhabitants were living on charity in the French settlements across the straits. Some were with the settlers on the Raisin and the Rouge. Some were dwelling in tents hard by the ruins of what had lately been their homes. The city on the day of its destruction consisted of a mass of wooden houses, covering a few acres of ground, parted by a few streets fifteen feet wide, and surrounded by a strong and high palisade. To rebuild on the old plan would, it was admitted by every one, be the height of folly. But to rebuild on any other plan seemed impossible; for the land outside of what had once been the palisade was public domain, and no man in the Territory had authority to sell it. A meeting of the people was accordingly held to determine what to do. Some were for going back to the old sites and the old plan. The majority were for laying out a great and splendid city, taking so much of the public land as was needed, and trusting to Congress to approve the act. The meeting was held on the first of July, the very day on which the territorial government was to go into force. As the Governor had not then arrived, the people were addressed by the Chief Justice, who had reached the Territory two days before. He reminded them that the new government would soon be in force, told them that Governor Hull would soon come, and urged them to be patient a little longer. They took his advice and agreed to do nothing for two weeks. That evening the Governor arrived.

His first work was to lay out the new city and cut it up into lots. The lots were then put up for sale at public auction, and, when enough were taken to satisfy the immediate needs of the people, the sale was stopped. For the best seven cents the square foot was paid. Four cents was the average price. If the buyer owned land in the old city he exchanged the old lots for new, foot for foot, and paid for the excess, if there was any. Most of the people, having been tenants, now seized with eagerness the chance to become the owners of land and houses. They were reminded, however, that the action of the Governor was without the sanc-

tion of law; that he had no right to take the public lands for a city, no right to cut it up into building-sites, no right to offer it for sale, and that they could not get a title without an act of Congress. Great as was the risk, the people gladly took it, began at once to put up houses, and despatched an agent to Washington to urge their suit before Congress. The Governor and the judges made a long report to Jefferson; Jefferson sent it to Congress, and Congress soon passed an act for their relief. To every person who, on the day of the fire, owned a house, or lived in a house in Detroit, who was seventeen years of age, and who owed no allegiance to any foreign power, was given a lot of five thousand square feet. Whatever more he wished he might buy, and the money arising from such sales was to be used to build a court-house and a jail.

To satisfy this grant, ten thousand acres were set apart in addition to the area of old Detroit. The Governor and the judges were made a board to lay out the new town, and performed their duty in a manner worthy of pedagogues. For the plan they selected an equilateral triangle, with perpendiculars let fall from the three angles to the sides opposite. One of the sides was to form the street along the river, and was to be run due north and south. One of the perpendiculars would therefore be due east and west. At the angle where it met the two sides was to be an immense circular space seven hundred feet in diameter, called the Grand Circus. In the centre of the triangle, where the three perpendiculars met, was to be another common, called the Campus Martius. Much of the original plan was long since obliterated; but enough still remains to enable the stranger in Detroit to locate with ease the Circus, the Campus, and the sides of the great triangle. Small as the area set apart for the town now seems, it was more than enough, for there were not then four thousand white people in the whole of Michigan. A few families were at Michilimackinaw, a few at Fort Miami, and a few scattered over the Territory. The rest were strung along the east coast from the Ohio boundary to Lake Huron, or along the rivers Rouge and Raisin. Their farms, after the fashion of the country, were laid out with the greatest regu-

larity. The road ran close to the water's edge. Along the road, side by side, were the farms, each forty French acres deep and from two to five French acres wide. Close to the road was the house. Back of each house was an orchard, and back of each orchard just as much grain as the needs of the family required. The whole number of such farms in the Territory was four hundred and forty-two.* Of these, but eight had clear and regular titles. The right of a few claimants went back to grants made by the old French governors, and confirmed by the French King. Some held under grants made by the governors but not confirmed by the King. Some had taken up their lands by leave of French military commanders, but had no grants nor written instruments of any kind. The rest were squatters of three sorts: those who, without leave of anybody, had settled on the land when Michigan belonged to the French, or when it belonged to the English, or after it became the property of the United States. So long as the settlements were mere outposts of civilization the people troubled themselves but little concerning title deeds and grants. But now that the community began to put in force the essentials of civil government, the question of ownership became very serious. Courts had been opened. Laws were to be enforced. The rights both of the Government and the individual were to be more carefully guarded. What, then, it was asked, was to become of men who, without a shadow of legality, had entered on the domain of the United States? What of men who, taking the law into their own hands, had made treaties with the Indians, had extinguished the native right to the soil, and had built houses and laid out farms on the land so obtained?

The people, in their anxiety, repeatedly urged the Government to do something. Grand Jury after Grand Jury presented addresses on the need of a quieting act. Hull dwelt at length on the matter in his first report to Jefferson. The

* Between Detroit and Lake St. Clair were sixty-three. In the Indian country north of St. Clair were one hundred and twenty-three. South of Detroit to the Raisin, mostly at Frenchtown, were one hundred and sixty-three. South of the Raisin, along Lake Erie, were seventy-five. The rest were scattered over the Territory.

militia companies sent their officers to a convention at Detroit, and the convention, as representing the people, addressed the President, and begged the Governor and one of the judges to go to Washington in their behalf. But nothing was done for them. When this was known in Michigan another convention was held and another address drawn and sent, this time to Congress. Then their complaints were heard, and in the bundle of acts Jefferson signed on the last day of the second session * of the ninth Congress was one for the settlement of land claims in Michigan. Another gave sixteen hundred acres each to the explorers Meriwether Lewis and William Clarke, and double pay and three hundred and twenty acres to every man who marched with them to the Pacific.†

In 1792, the very year in which Captain Grey discovered the mouth of the Columbia river, Jefferson urged the American Philosophical Society to send a couple of explorers into the country where is now its source. The sum required was not great, yet nine years went by before enough was raised to make the expedition possible. A young officer named Meriwether Lewis was then selected, and with him was joined a Frenchman named André Michaux. Michaux was a botanist of repute and had, in the autumn of 1801, come over from France to study the plants and trees of the United States. But the two got no further than Kentucky when a letter from the French Minister bade Michaux give up the expedition and study botany elsewhere. He obeyed, for he had in a measure been sent out by Chaptal, the French Minister of the Interior. The disappointment of Lewis was great; but he was soon consoled with the place of Private Secretary to the President.

While he held this post a fine chance opened for securing the long-wished-for expedition. The act establishing trading posts among the Indian tribes was soon to expire. Jefferson was desirous that the new law should extend the system to the Indians on the Missouri, and made this a pretext for urging the exploration of the river from its mouth to its source. The money was granted. Meriwether Lewis was again put in command, and chose for his second William

* March 3, 1807. † March 3, 1807.

Clarke. Jefferson drew their instructions, and, after many weeks spent in careful preparation and many more lost in unavoidable delay, the party reached Cahokia in December, 1803. To go at that time of year was impossible. The winter was therefore passed in camp on the Illinois side of the Mississippi river, just opposite the mouth of the Missouri. Their instructions bade them go up the Missouri to its source, find out if possible the fountains of the Mississippi, and the true position of the Lake of the Woods; cross the Stony Mountains, and, having found the nearest river flowing into the Pacific, go down it to the sea. All along the way the great features of nature, mouths of rivers, falls, rapids, islands, portages were to be carefully located by astronomical means. A study was to be made of Indian life. What tribes were met with, what language they spoke, what food they ate, what laws and customs prevailed among them, what they did, and what they believed, were all to be fully noted down. The animals encountered, the minerals found, the botany and the physical geography of the country were likewise to be described. Nor were they to fail to notice what kind of portage lay between the waters flowing into the Gulf and the waters flowing into the Pacific, and whether as good furs could not be had about the sources of the Missouri as were bought from the Indians on the Columbia.

Early in May, 1804, the explorers broke camp and set off in three boats loaded with trinkets for the Indians. By November they reached the Mandan villages, not far from the present city of Bismarck. There the winter was passed. Resuming the journey in the spring of 1805, they pushed up the Missouri, crossed North Dakota, crossed Montana, and near the present town of Gallatin came to three branches. These they named Gallatin, Madison, and Jefferson, names still given them on the maps. Taking the Jefferson branch, they followed it to its source in the Bitter Root Mountains and slaked their thirst at what seemed to be the source of the Missouri river. Crossing the divide, they came some hours later to another spring, and drank for the first time of the waters of the Pacific slope. They were at the head-waters of what they called Lewis, but what is now known as the Salmon river. Un-

able to push their way down this, they turned backward and wandered through the mountains to Bitter Root river. Down the valley of this stream they went to a spot not far from its junction with the Flathead; named the place Traveller's Rest, and, turning westward, went over a mountain pass to Clear Water river. The Clear Water bore them to the Snake, the Snake to the Columbia, and the Columbia to a spot where, late in November, they "saw the waves like small mountains rolling out in the sea." Winter was spent on the Pacific coast. With spring the explorers retraced their steps to Traveller's Rest, where the party was divided. Lewis with one band went off to the sources of the Maria river; Clarke with another band went down the Yellowstone. In September, 1806, both parties were once more at St. Louis.

While Lewis and Clarke were thus seeking for the sources of the Missouri and the Columbia in the mountains of Montana, Zebulon Pike was exploring the sources of the Mississippi in Minnesota. Leaving St. Louis in August, 1805, he made his way slowly up the Mississippi, lived all winter among the Indians and the agents of the Northwest Fur Company, explored the cluster of lakes that feed the great river, and decided the main source to be Lake Le Sang Sue. In April, 1806, Pike was back at St. Louis. There a new and yet more arduous duty was given him. He was to escort a delegation of Indian chiefs to their villages on the Osage river. He was to visit the tribes that dwelt along the Arkansas and the Red, and, if possible, persuade the Comanches to come to a conference at St. Louis. On July fifteenth he started. His route was by boat up the Missouri to the Osage, and up the Osage to the village of the Indians he was escorting. There he took horse, went southward to the source of the Osage, and then northwestward across the present Indian Territory, crossed the Verdigris river and the Kansas river, traversed the State of Kansas, and reached a point on the Republican river in Nebraska. Then he turned southward and struck the Arkansas river not far from the ninety-ninth meridian. Pushing up the Arkansas to a point near Denver, he measured the height of the peak that now bears his name, crossed the mountains, crossed the Platte, came to the

Big Horn, explored the sources of the Arkansas, and began a vain search for the Red. Determined to find it, he built a block-house on the banks of the Arkansas, filled it with provisions and cumbersome baggage, and went on westward and southward. The march was a terrible one. It was the depth of winter. The cold was intense. The snow was waist-deep. The men, half clad, depended for food on the buffaloes; but the buffaloes had left the plains and taken refuge in the mountains. To the sufferings caused by cold were thus added the sufferings caused by hunger. Often they were forty-eight hours without food. Once Captain Pike was on the point of perishing from starvation. Two of his men had their feet so frozen that the bones came through the flesh. Even then he would not give way. Leaving them in a rude camp, he pushed on southward till late in January, 1807, he saw through a gap in the mountains the waters of the Rio Grande. Supposing it to be the Red, he hurried to its banks, selected a spot on one of its feeders, put up a strong fort, and sent back for his disabled companions and his baggage. Before they came, the Spaniards were upon him in force. Finding himself on Spanish soil, he submitted and was taken to Santa Fé. There the Governor of New Mexico examined him and sent him to the commandant at Chihuahua. Dismissed by him, Pike and his company took the longest and safest route home, went south far into Mexico, and, turning northward, crossed the Rio Grande, traversed Texas, and July first reached the American fort at Natchitoches on the Red river.

CHAPTER XVII.

THE SPREAD OF DEMOCRACY.

The admission of Ohio into the Union as a State was attended with no general demonstrations, and aroused very little interest beyond her own bounds. Yet every Republican observer of days and seasons, every Republican who, on the fourth of each March and the fourth of each July, heard speeches and drank toasts in honor of the triumph of Jeffersonian principles and the rights of man, might well have marked the admission of Ohio. The adoption of her Constitution was a political event. It was another triumph for the rights of man; another victory in that great struggle on the results of which are staked the dearest interests of the human race. No person could, in 1803, look over our country without beholding on every hand the lingering remains of monarchy, of aristocracy, of class rule. But he must indeed have been a careless observer if he failed to notice the boldness with which those remains were attacked, and the rapidity with which they were being swept away. In the seaboard States—in the States which, with the advice of the Continental Congress of 1776, took up civil government and formed constitutions in the early days of the Revolutionary War—very little of what would now be called democracy existed. Everywhere the political rights of man were fenced about with restrictions which would now be thought unbearable. The right to vote, the right to hold office, were dependent not on manhood qualifications, but on religious opinions, on acres of land, on pounds, shillings, and pence. Voters must own land or property, rent a house, or pay taxes of some sort. Here the qualification was fifty acres of land * or personal property to the value of thirty pounds.

* Maryland, North Carolina, South Carolina.

There it was a white skin, and property to the value of ten pounds. In one State it was a property tax.* In another the voter must be a quiet and peaceable man, with a freehold of forty shillings or personal estate worth forty pounds. To be enfranchised in South Carolina, the free white man must believe in the existence of a God, in a future state of reward and punishment, and have a freehold of fifty acres of land. To vote in New York he must be seized of a freehold worth twenty pounds, York money, or pay a house rent of forty shillings a year, have his name on the list of tax-payers, and carry in his pocket a tax receipt. In Massachusetts the requirements were a freehold estate yielding three pounds a year income, or the possession of any estate worth sixty pounds. In Connecticut they were an annual income of seven dollars from a freehold, or real estate rated on the tax list at one hundred and thirty-four. In New Jersey the franchise became in time unintentionally broad. Drawn and accepted in the space of ten days, the Constitution had never undergone a careful revision. Many phrases in consequence were fairly susceptible of a construction very different from the intention of those who wrote them, and none more so than the words which gave the ballot to "all inhabitants of the State" who were twenty-one years old and owned fifty pounds proclamation money, clear estate. Property, age, and residence were the sole qualifications. Not a word was said concerning sex, race, or citizenship, and during thirty-one years women, negroes, and aliens were free to vote. That they did vote is partly proved by the traditions in many families of a great-grandmother or great-grand-aunt who went year after year to the polls, but chiefly by the law of 1807 which restricted the franchise to free white males, and declared in the preamble that this limitation was made because women, negroes, and aliens had been allowed to vote. The same law further provided that the payment of State or county tax should be the equivalent of fifty pounds, clear estate.

But the right to vote, even when secured, did not by any means carry with it the right to hold office. Thousands of

* Pennsylvania.

men who, on election days, came to the polls were by law hopelessly debarred from ever, in the whole course of their lives, holding the office of sheriff, or taking a seat on the bench, or becoming a member of the Legislature, or reaching the high place of Governor of a State. No atheists, no free-thinkers, no Jews, no Roman Catholics, no man, in short, who was not a believer in some form of the Protestant faith, could ever be Governor of New Jersey or New Hampshire, Connecticut or Vermont. Any rich Christian might be the executive of Massachusetts or of Maryland. Elsewhere he must be a Trinitarian and a believer in the inspiration of the Scriptures, or a Protestant and a believer in the divine authority of the Bible, or acknowledge one God, believe in heaven and in hell, and be ready to declare openly that every word in the Testaments, both Old and New, was divinely inspired. Not content with restrictions such as these, the constitutions of many States went further and required that the Governor should be not only pious, but rich. In one he must have an estate of one hundred, in another of five hundred, in another of five thousand, in another of ten thousand pounds; in yet others he must own two hundred and fifty or five hundred acres of land. For a seat in either branch of the State Legislatures qualifications were of the same kind. The people of New Hampshire thought it necessary that each senator should be seized in his own right of a freehold estate worth two hundred pounds, and each representative an estate of one hundred pounds. Massachusetts placed her requirements higher yet, and would suffer no man to become a member of the upper branch of her General Court who did not have a freehold of three hundred pounds or personal property of six hundred. For the lower branch the sum was one third as great. Men who aspired to a seat in the Council of New Jersey, to the Senate of Delaware, to the Senate of Maryland, must own one thousand pounds of real or personal estate, or in Delaware two hundred acres of land. South of Pennsylvania the land qualification was general. Senators in North Carolina owned three hundred acres; representatives in South Carolina must have five hundred acres and ten negroes; and in Georgia two hundred and fifty acres and support the Protestant religion.

In four States no priest, no minister of any creed, could hold a civil office.* The duty of such men was to serve God, not man. They were therefore strictly enjoined to concern themselves with things spiritual, and leave the care of things temporal to laymen.

Against such restrictions not a voice seems to have been lifted. But the leaven of the Revolution was quietly at work, and one by one they were slowly swept away. First to go was the religious qualification; and when the Continental Congress framed the ordinance of 1787, no qualification was exacted from the Governor and the Judges, the Secretary and the voters, other than age, residence, and the ownership of land in the Territory. In that same year came the Constitution of the United States, and seemingly a great step backward was taken, for no man could vote for a member of the House who could not vote for a member of the most numerous branch of his State Legislature, and all the restrictions imposed on suffrage by the constitutions of the States were thus reimposed by the constitution of the United States. Happily, the recoil was of short duration. It was a recoil, not a general ebb, and in a little while the current was again running strongly in the old direction. During the ten years which followed the inauguration of Washington eight constitutions were made or amended, and by almost every one the rights of man were extended.

Pennsylvania cast away her religious test as worthy of the dark ages, and left the ballot in the hands of every tax-paying male. South Carolina ceased to require her voters to be good Protestants, and opened the polls to Catholics. New Hampshire abolished forever the religious qualification once exacted of her Governors and her legislators, took off the poll-tax, and gave suffrage to every male inhabitant twenty-one years old. Delaware enfranchised every free white man who had resided two years in the State and had paid his taxes, and no longer asked him if he believed in the existence of the Trinity and in the divine inspiration of the Testaments. In Kentucky and Vermont the reform went further yet, and by the constitutions of those States manhood suffrage was, for the first time

* New York, Delaware, Maryland, Georgia. In Georgia the prohibition was limited to the Assembly.

in our history, made part of the political system of the United States. In Kentucky any free white man; in Vermont any man, black or white, who was of age and had lived one year in the State, could vote. Georgia deprived her Governor of the aristocratic title of Honorable, dispensed with religious qualification for civil officers, and relieved her voters of the necessity of owning ten pounds of property. New Jersey was the next to feel the impulse, and in the last months of the century an earnest effort was made to reform her Constitution of government. That instrument had been hastily framed before the Declaration of Independence had been declared,* and was intended to be temporary, and expressly recognized the authority of Great Britain over New Jersey. It was "We, the delegates of the colony of New Jersey," who framed "the government of this province."† One article ordered a great seal "for the colony"; another commanded all writs and commissions to run "in the name of the colony"; another, that all indictments should conclude "against the peace and dignity of the colony"; still others, that every official should swear allegiance to the colony, and that the opening words of every law should read, "Be it enacted by the Council and General Assembly of this Colony";‡ and that the Constitution should remain inviolate. But it had not been kept inviolate. No writ ran in the name of "this colony." No seal, no law, no commission, no oath anywhere administered, contained the word. That this was legal the reformers denied; but the faults which called forth their strongest protest and their heartiest denunciation were the loose principles on which the rights of electors and the elected rested. "All inhabitants of this colony of full age, who," said the Constitution, "are worth fifty pounds proclamation money, clear estate," shall vote. Is not a woman, said the reformers, is not an alien, is

* The recommendation of Congress to form a temporary Government was taken up June 21, 1776; the Constitution was accepted July 2, 1776.

† July 18, 1776, it was "Resolved, That this House from henceforth, instead of the style and title of the Provincial Congress of New Jersey, do adopt and assume the style and title of the Convention of the State of New Jersey."—Journal of the Votes and Proceedings of the Provincial Congress of New Jersey, July 18, 1776, p. 75.

‡ Changed by laws of September 20, 1777; December 16, 1783.

not a convict, living in New Jersey, an inhabitant, and may they not legally vote? The Council and the Assembly, says our Constitution, "shall elect some fit person" to be Governor. May they not, if they think fit, choose a child or a jail-bird, or native of Europe, just landed on our shores.* Among the reforms demanded, and they were many, were therefore limitations on the suffrage and on the right to hold office. But the spirit of democracy was abroad; the people would listen to no restrictions, and the old Constitution lived forty-five years longer.

Thus was it that between the day when Washington was inaugurated President at New York and the day when, mourned by the whole people, he was carried to his grave, many of the old limitations of the inalienable rights of man were effaced from the law of the land. In general, it may be said that church and state were parted; that religion ceased to be a qualification for civil office; that the property qualification was greatly reduced; and that the democratic principle of universal suffrage was spreading fast.

With the opening of the new century came what, in the toasts of the day, was fondly called the triumph of democratic principles. That it was a real triumph and not a mere party success; that new ideas did take hold on the minds of men; that new truths were discovered; that society did go forward; that a great reform in manners, in customs, in institutions, in laws was under way; that the day when there should be in this country a government of the people by the people, was beginning to break, must not for one moment be doubted. East of the Alleghanies long-established precedents, time-honored usages, the presence of a ruling class, the thousand hindrances which beset every reform, checked the spread of the new faith. West of the Alleghanies no such difficulties were met. It is therefore with feelings of peculiar interest that we should consider the first Constitution of Ohio. It was the handiwork not of men laboring to reform old abuses, but

* Eumenes; being a Collection of Papers written for the purpose of exhibiting some of the more Prominent Errors and Omissions of the Constitution of New Jersey, . . . and to prove the Necessity of calling a Convention for Revision and Amendment. Trenton, 1799.

of men free to set up just such a government as to them seemed best. It was the full expression of the most advanced ideas of free government.

Many of its features show a close resemblance to the constitutions then in force. There was a long bill of rights, there was a schedule, there was the old division of powers granted into legislative, executive, and judicial. But, while old forms were retained, new ideas were incorporated. The Governor was stripped of all power and patronage. He made no nominations; he exercised no veto; he signed no bills; he had no share in legislation; and, save in the case of the Adjutant-General, or when a vacancy occurred during a recess of the Legislature, he appointed no man to office. The House and Senate sitting in the same chamber filled all civil offices and, what was far more important, elected judges to serve for seven years. There were indeed some States in which the Governor possessed no veto,* there were others in which he appointed no man to office,† and there were yet others in which the tenure of the judge was a fixed term of years.‡ But never before had these three attributes of democracy been brought together in one and the same State constitution. Of all remnants of monarchy, the life tenure of office was to the Democrats the most flagrant and offensive. Why, they would ask, should this be? Why should we change our rulers every few years and not our judges? If it is dangerous to liberty to entrust men with long-continued power to make laws, is it not equally dangerous to liberty to entrust men with long-continued power to interpret laws? Is there anything in the judicial office which renders the judge insensible to the evils which afflict the legislator? There surely is not. Indeed, it is a question whether, in such a system as ours, the judge is not particularly liable to acquire them. While all else in the State is mutable, he is immuta-

* Delaware, South Carolina, Tennessee.

† Rhode Island, North Carolina, and Tennessee.

‡ Connecticut, Rhode Island, where the judges were appointed annually; Vermont, where they were elected annually "or oftener if need be"; in New Jersey, where the tenure was seven or five years; and in Georgia, where it was three years.

ble. All about him he sees presidents, Congresses, governors, assemblies, sheriffs, mayors come into office, have their day and go out of office, while he sits undisturbed on the bench. As a result of this he soon begins to look on himself as the one indispensable part of the machinery of government. He is a highly privileged man, and in a little while thinks himself a member of a caste, of an aristocracy. Is not all this directly opposed to the great principle of responsibility to the people which lies at the base of all representative government?

As State after State went over from Federalism to Republicanism, the question assumed a political importance before unknown. Then it was pronounced monstrous that a change of party should not be followed by a change of party men. Earnest Democrats could not brook the sight of old Federalists holding commissions in the peace, presiding at Courts of Quarter Session and sitting as justices on the bench of courts of last resort, long after every other Federalist office-holder had been driven into private life. In Pennsylvania, where the franchise was widely extended and the Democrats most numerous and active, the feeling ran high, and there the Democratic victory of 1799 was at once followed by an assault on the independent judiciary.

In that commonwealth the judicial power was vested in a Supreme Court whose jurisdiction extended over the entire State; in courts of oyer and terminer and general jail delivery; in five courts of common pleas whose jurisdiction was limited to circuits of from three to six counties; in orphans' courts, registers' courts, courts of quarter session, and in justices of the peace. On the bench of the Supreme Court sat four judges, who held office during good behavior, but were removable for serious offences by impeachment, for trivial offences by the Governor on the address of two thirds of both branches of the Legislature. For each of the five courts of common pleas there was a "president judge" who rode the circuit of his counties, holding now a court of common pleas, now a court of oyer and terminer, now an orphans' court, now a registers' court. On all such occasions he was assisted in each county by a bench of three or four county judges, likewise removable by impeachment or address. The president judges were men of ability

and well read in the law. But no such qualifications were thought necessary in the county judges, who were in general laymen, and the worst kind of laymen, small politicians. The drunkenness, the brawling, the neglect of duty, the airs which these men assumed, and the petty spite they exhibited toward such political opponents as came within their power, made them more hateful to the people than the excise collector or the assessors of the direct tax. They were all Federalists. To complain of them to a Federal governor and a Federal Senate would have been useless. But the moment Thomas McKean was chosen Governor, the moment the Senate passed into Republican hands, complaints and demands for relief came up from every part of Pennsylvania. Two, during the heated campaign of 1800, had sat quietly on the bench while a clerk of quarter sessions was well pummelled by a political enemy. On another occasion a judge had quit the bench, gone down into the crowd, and engaged in a fist fight with a man he claimed had insulted him. Two others had prevented the sitting of a court by staying away. Still another had forged a name to the acknowledgment to a deed. In Wayne County a judge had, by main strength, dragged a colleague from the bench and kept him from attending Court. As a class, they were well described in a petition to the Legislature, which declared them to be destitute of all legal knowledge, burdensome, and expensive. The justices of the peace seem to have been worse yet. Many were tavern-keepers. A few were charged with keeping houses of ill-fame. That they were grossly ignorant and grossly unjust cannot be doubted. The Legislature having taken up the most flagrant of these cases, and the Governor having made a few removals, some fierce Democrats were encouraged to attack the president judge of their circuit, whose ruin had been carefully planned.

This man was Alexander Addison. Born in Ireland and educated in Scotland, he was by profession a preacher, and had, before he emigrated to America, been licensed by the Presbytery of Aberlowe. He seems, however, to have been early attracted to the United States, and, soon after the close of the war for independence, crossed the ocean and went at once to the Scotch-Irish settlements about the sources of the Ohio. There,

in 1785, the Redstone Presbytery licensed him to preach within their jurisdiction. But the people of that region were just then much more concerned with politics than with religion. Should Spain be allowed to close the Mississippi to citizens of the United States? Should the Articles of Confederation be amended? Should Congress be suffered to drive settlers from the country north of the Ohio? Should the Constitution be adopted? These were the questions which kept the people in a ferment. Catching the popular excitement, Addison quickly turned from religion to politics, brushed up his knowledge of law, was admitted to the bar of Alleghany County, and gave a warm support to the Federal side of every question. This, in the Western country, was the unpopular side. When, therefore, the Judiciary Act was passed by Pennsylvania, in 1791, Addison was rewarded for his services with the place of president judge of the Courts of Common Pleas within the fifth circuit. His politics, his belief in a strong government, his defence of every Federal measure, from the funding system and the bank to the whiskey tax, the British treaty and neutrality, would have been more than enough to have made him the most hated man in Alleghany County. But the lectures on politics which he delivered from the bench made him simply unendurable. The subject of one charge was the Causes and Error of Complaints and Jealousy of the Administration of the Government.* In the course of his remarks he told the jury and the crowd that they were confounding the right to judge with the ability to judge; that while they had the legal right they certainly had not the ability; and that their complaints against the Government were just in proportion to their ignorance. In another charge he reviewed the Alien Act,† and in a third the Sedition Law.‡ Enraged beyond endurance at these repeated scoldings, the people of Alleghany County petitioned the Legislature in March, 1800, for a committee

* Causes and Error of Complaints and Jealousy of the Administration of the Government; being a Charge to the Grand Juries of the Counties of the Fifth Circuit of the State of Pennsylvania, at March Sessions, 1797.

† Charge to the Grand Juries of the County Court of the Fifth Circuit of the State of Pennsylvania, at December Session, 1798.

‡ The Liberty of Speech and of the Press. A Charge to Grand Juries. By Alexander Addison. 1798.

to hear charges against him and report to the next session. That Addison knew of the petition is most likely. But the Presidential election was at hand, political animosity was running high, and he gave it no heed. Indeed, at the December session of the courts his charge was more offensive to his hearers than ever. He called it the Rise and Progress of Revolutions.* The revolutions then going on in Europe were, he said, not the work of a day, but of a long and systematic course of operations on public opinion. This course of operations was detailed in a book called "Memoirs for illustrating the History of Jacobinism," a book the Judge declared to be well worth reading.

From these memoirs it appeared that three great conspiracies had been planned and accomplished. First came the Anti-Christian Conspiracy, which overthrew Religion and the Church. Then came the Anti-monarchical Conspiracy, which pulled down the throne. And lastly the Anti-social Conspiracy, which had undermined the whole social fabric. The work of the three classes of conspirators had been done by means of books and pamphlets distributed gratis, by debating societies, by philosophers, by Jacobin clubs, and Illuminers, or Illuminati. The Judge then went on to show that precisely the same agents were at work in this country, and that they would, unless checked speedily, bring about precisely the same consequences Paine and his "Age of Reason" represented the Anti-Christian Conspiracy. The libellous press and the Democratic societies represented the Anti-governmental Conspiracy, while the Society of United Irishmen were the Illuminati aiming at the ruin of society.

This was too much. The day of tame submission was gone, and, when Addison had read his charge to a Grand Jury in Alleghany County, one of the judges rose and attempted to make a reply.† He was a Frenchman named John B. C. Lucas, who, as a devoted friend of Hugh H. Brackenridge, the leader of the Pittsburg Republicans, had a few

* Rise and Progress of Revolution. A Charge to the Grand Juries of the County Courts of the Fifth Circuit of the State of Pennsylvania, at December Session, 1800. By Alexander Addison, President of those Courts.

† December 22, 1800.

months before been made judge by Governor McKean. But Lucas had scarcely uttered, in broken English, the words "Gentlemen of the jury," when Addison stopped him and bade him sit down, for it was a rule of the Court that the president judge alone should address the jury. Lucas yielded quietly. But Brackenridge, well knowing that Addison had no right to stop him, forced Lucas to carry his grievance to the Supreme Court and move for leave to file an information. This was refused, and Lucas, instigated by Brackenridge, led Addison, at the next session * of the Court of Common Pleas, to aggravate the offence yet more. Nor was this all, for, when the Court of Quarter Sessions of the Peace met in June, the old scene was again enacted.† Thinking that enough had now been done to justify impeachment, Brackenridge persuaded his friends in the counties of Addison's circuit to petition the Legislature to remove the offensive judge from office. After considering the papers a committee assured the House that Addison had been guilty of a gross usurpation of authority; that if one judge could with impunity arrogate to himself powers which belonged to his associates, the independence of the county judges was destroyed; and that, in their opinion, he ought to be impeached. The House accordingly impeached him; the Senate, in January, 1803, tried him, found him guilty of a misdemeanor, ordered him removed and disqualified ever again to hold the office of judge in any court in Pennsylvania.‡ Two weeks later the Representatives were earnestly besought to impeach three justices of the Supreme Court.#

There was then living in Philadelphia a man named Thomas Passmore. He began life as a mechanic, but by thrift and industry had made money, which he invested in commercial enterprises. To protect himself against loss he had, after the fashion of the time, employed a number of underwriters to

* March 28, 1801. † June 22, 1801.

‡ Trial of Alexander Addison, President of the Courts of Common Pleas, in the Fifth Circuit . . . . on an Impeachment, by the House of Representatives, before the Senate of the Commonwealth of Pennsylvania. Taken in short-hand by Thomas Lloyd. 1803.

Journal of the Pennsylvania House of Representatives, February 28, 1803.

cover the risk of his adventures on the sea. One of his ships, happening to spring a leak, put into a port of Nova Scotia, where, the bill of repairs amounting to more than half the policy, Passmore abandoned the vessel and called on the underwriters to pay the insurance. Holding that repairs so extensive proved the ship unseaworthy when the insurance was obtained, one firm refused, persuaded the rest to do likewise, and during seven months the policy remained unsatisfied. Passmore then brought suit; but the defaulting firm proposing that the case be submitted to arbitrators, a rule of the court for an amicable action was obtained, arbitrators appointed, and, in time, a judgment in favor of Passmore was given. By the rules of the Supreme Court, exceptions might be taken within four days; but, as a matter of fact, no exceptions were filed for thirty days. Knowing nothing of this, Passmore, soon after the exceptions were entered, went to the Coffee House, and there, in an abusive paper, posted the refractory firm of underwriters. The proprietor tore it down, gave it to the libelled underwriter, who carried it to the Court, before which Passmore was summoned to appear and answer for contempt. He came, was told that he had committed an enormous libel, and bidden to apologize to the men he had injured. This he stoutly refused to do, and was, in consequence, fined fifty dollars and thrown into jail for thirty days.

Smarting under this harsh treatment, Passmore complained to the Legislature. The committee to whom the memorial was sent reported that the summary mode of punishing contempt, as laid down in the English books, and as practised in the English courts, was not suitable to the Constitution and the laws of Pennsylvania. Every decision of facts by courts of law without the intervention of a jury was, in their opinion, a step towards aristocracy, the most oppressive of arbitrary governments. Such conduct by the courts, unless stopped, would gradually but surely undermine trial by jury, the great bulwark of liberty. They recommended, therefore, a bill to define contempt. But the judge-breakers were not to be deprived of their prey, and secured a reference to a special committee, from whom came a recommendation that the next

House make an investigation. This the next House did, and impeached Edward Shippen, Jasper Yeates, and Thomas Smith, the three justices of the Supreme Court who sat at the trial of Passmore. And now the whole community took alarm. For the moment politics were forgotten, and all over the State lawyers, judges, men of wealth, men of education and refinement, made common cause against the Democrats. When the Legislature passed a bill reforming the whole judiciary system the Democratic Governor returned it with his veto. When the managers of the impeachment sought among the Democratic lawyers for counsel, neither Alexander Dallas, nor Jared Ingersoll, nor Peter Duponceau, nor any lawyer of note in Pennsylvania would serve them.* When Hugh H. Brackenridge, the only Democratic judge on the supreme bench, wrote to the Legislature, told them that he approved of the action of the Court in the Passmore case, and asked to be impeached, the Legislature called on the Governor to remove the judge for insolence; but again the Governor refused to comply. When the Senate tried the impeachment, the judges, by a vote of thirteen to eleven, were declared not guilty.

For years past no event had occurred which so aroused the people. The cry for reform which now went up was such as had not been heard since the days of the Alien and Sedition Laws. British common law, it was said, had triumphed. The sovereignty of the people, the rights of man, the Constitution and the laws of Pennsylvania, were henceforth to be subject to the customs and usages of British courts. When had there ever been so fine an illustration of the corrupting influence of office held by appointment and for long terms? Time was when the people had no truer friend than Thomas McKean. Yet had not he, after six years of office-holding, forgotten the people and twice defied their will as set forth by their representatives? Was Alexander Dallas, the Republican lawyer of 1800, the same man as Alexander Dallas, the District Attorney, refusing to plead for the people in 1805? Was Brackenridge, the leader of the whiskey rebellion, the same man as Bracken-

* For counsel they finally secured Cæsar A. Rodney, of Delaware.

ridge the Justice of the Supreme Court begging to be impeached? Was Thomas Cooper, the earnest Republican, suffering fine and imprisonment under the Sedition Law, the same man as Judge Thomas Cooper, of Northumberland, applauding the conduct of the Senate? Nay, could any one have believed that a few short months of power would have turned the Republican Senate which convicted Judge Addison into the Republican Senate which acquitted Judges Shippen, Yeates, and Smith? Could any man say, in the face of all this, that an independent judiciary, long tenures of office, and places for which the people did not choose the incumbent were republican institutions?

Maddened by defeat and honestly convinced that evils existed for which a remedy must speedily be found, the Republicans cried out for a convention to amend the Constitution. Strangely enough, while that document provided for amendment it made no mention of the way in which the mending should be done. But Duane, who still edited the Aurora, was at no loss for a way. The will of the people was supreme. The people, therefore, should bid the Legislature call a convention; the Legislature, acting on this authority, should issue a call, and the convention, when it met, should make the amendments and submit them to the people for ratification. To express the will of the people to the Legislature, petitions from all parts of the State were needed. A Society of Friends of the People was therefore formed, a short constitution drawn up, a committee of correspondence chosen, a model petition framed, and appeals sent out for Democrats in every county to organize like societies and send like petitions to the Legislature without delay. Taking the hint, the friends of the Governor formed a society, called themselves Constitutional Republicans, and, before a month had passed, great bundles of petitions bearing thousands of names and praying that a convention be not called reached the Legislature.

Our constitution, said the Friends of the People, has been in force fifteen years. During that time experience has shown it to possess many excellencies and many defects. Among these defects is a tendency to produce in officials a sense of irresponsibility to the people. The patronage of the Governor

is too extensive; his veto power is too great; he should come more often before the people for election. The term of a Senator should be reduced. The whole judicial system should be reformed and justice be made speedy, sure, and cheap. The petitions of the Constitutional Republicans denied that any of these reforms were needed, declared the Constitution good enough, and asked that a convention be not called. The action of the House was worthy of Wouter Van Twiller. Hearing that the petitions in favor of a convention was seventy-four, that they came from eleven counties and bore forty-nine hundred and forty-four names; that the number against a convention was eighty-nine; that they came from nine counties and were signed by fifty-five hundred and ninety names; it decided that in the face of this showing it was best to do nothing, and referred the whole matter to the people.

To refer the matter to the people was easy enough, for the election of a governor was then at hand. In ordinary times such an election would have been tame enough, for the Republican majority was thirty thousand.* But the quarrel which had long been going on among the leaders now spread to the voters; a great schism took place, and the Republican party in Pennsylvania was rent in twain. The Republican members of the Senate and House, before the Legislature rose, met in caucus and nominated Simon Snyder for Governor. The Constitutionalists renominated Thomas McKean. The campaign that followed was such as the State had not seen since the Constitution of the United States was before it for adoption or rejection. There was indeed some abuse. McKean was denounced for his nepotism, for the use of his veto power, for refusing to remove Judge Brackenridge when asked to do so, and for having called the people clodhoppers and geese. Snyder was held up to laughter as the Pennsylvania Dutchman of tradition. But the real question at issue was: Shall the State Constitution be amended? During four months the newspapers were filled with essays, letters, appeals, long addresses from committees of correspondence, and long resolutions passed at public meetings. Comparative studies

* The vote in 1802 was: Federal, 17,125; Republican, 47,567.

were made of other State constitutions. The evils of the veto power, the evils of the English common law, the evils of the appointing power, the evils of allowing judges to pronounce on the constitutionality of laws, were discussed most fully. The remedy suggested was to elect the Governor, the senators, and the judges every two years, have all appointments made by a committee of the Assembly, and provide for the settlement of suits by arbitration. But it was of no avail. When election day came, five thousand more votes were cast for McKean than for Snyder, and the attempt to secure a convention was given up.*

The struggle for judicial reform thus begun by the Republicans of Pennsylvania, found many imitators elsewhere In New Jersey murmurs were again heard that the time had come for the people of those States to make a new Constitution. In Connecticut an effort was made to reform not merely the judicial, but the legislative and the executive branches of government, indeed, to make a brand new Constitution. In Maryland the people repeatedly amended their Constitution, extended the franchise, made the governorship an elective office, and swept away the General Court and the Court of Appeals. So terrible did these encroachments of democracy seem that Justice Samuel Chase, of the United States Supreme Court, while riding his circuit, denounced them from the bench to the people of Baltimore. His remarks, to say the least, were most uncalled for. He was a citizen of the State, and as such might well take a lively interest in her political welfare, and was fully entitled to express his opinion at the proper time and place. But the charging of a jury was not the proper time, nor the bench of a circuit court the proper place for the expression for such opinions. This the Democrats well knew, and promptly demanded that Chase be broken. To secure his impeachment was easy, for the Republicans undertook nothing more readily than an attack on the odious Federal judiciary. Thrice already, since they came into power, had they assailed it, and, though they could

* The vote, and it was the largest yet cast in Pennsylvania, was: McKean, 43,644; Snyder, 38,433; "Saml" Snyder, 395; total, 82,472. Aurora, December 21, 1805.

not destroy, they had maimed it, defaced it, and left on it the marks of their unreasonable hatred.

The act of September twenty-fourth, 1789, establishing the judiciary, provided for district courts, circuit courts, and one Supreme Court, over which presided a bench of six judges. At first the district courts were thirteen in number; one for Maine, one for Kentucky, and one for each of the eleven States then composing the Union. On the bench of each sat one judge who held four sessions annually. From the decisions of a district judge, should the money involved be sufficient, an appeal lay to one of the circuit courts, where twice a year cases were tried before two justices of the Supreme Court and the district judge of the district in which the Court was sitting. These circuit courts were three in number: the eastern, comprising New Hampshire and Massachusetts, Connecticut and New York; the middle circuit, in which lay New Jersey and Pennsylvania, Delaware, Maryland, and Virginia; and the southern circuit, in which were South Carolina and Georgia. In Maine and Kentucky the district courts were given, with a few exceptions, the powers of the circuit courts. From a circuit court, in turn, an appeal might be carried to the Supreme Court, composed of a chief justice and five associate justices, who, in February and August of each year, held court at the seat of government.

As new States were admitted into the Union, new district courts were opened. But, with these exceptions, the judiciary underwent no change for twelve years. Then, in the closing days of John Adams's term, the old law of 1789 was repealed. Six circuit and twenty-two district courts were established; a provision was made that the first vacancy in the associate justiceships should not be filled; the district courts of Kentucky and Tennessee were abolished; justices of the Supreme Court were no longer required to ride on circuit. That duty was to be done by sixteen circuit judges, of whom three were assigned to each of five circuits and one to the sixth.

Such was the organization of the Federal Court when, March fourth, 1801, the Republicans came into power. To them the whole Federal judiciary was hateful for four reasons. In the first place, the Supreme Court had attacked

State sovereignty, had asserted the suability of a State, and had attempted to drag Georgia before it as a defendant. In the second place, not only the Supreme Court, but the circuit courts had set themselves up as final arbiters, and had pronounced on the constitutionality both of State laws and of Federal laws. In the third place, judges were independent of the people, held office for life, and could not be removed save by the ponderous machinery of impeachment. In the fourth place, the Judiciary Act of 1801 was a piece of defiant legislation; an attempt to make life offices for a host of Federal judges. The first session, therefore, of the first Congress under Jefferson's administration was not suffered to close till the judiciary was a second time reformed. To abolish the Supreme Court was not possible; but to cripple its working was quite possible, and it was crippled by abolishing the August term, and by again sending the justices wandering over the country on circuits. To take an innocent judge away from his office was not possible; but to take the office from him was held to be quite constitutional, and the sixteen circuit judgeships were abolished, and the district judgeships rearranged in six new circuits.

The second attack was made by Jefferson, and was directed against the judiciary of the District of Columbia. As then marked out, the District was precisely ten miles square, lay partly in Maryland and partly in Virginia, and, by the first Congress that ever met at Washington city, was divided into two counties separated by the Potomac river. So much as happened to be in Virginia was organized as Alexandria County. So much as happened to be in Maryland was called the County of Washington. In each the President was to appoint as many justices of the peace as he thought proper, to hold office during five years.* Exercising this discretion, Adams, on the second of March, 1801, sent to the Senate the names of four men, two to be justices in each county.† The four thus nominated were William Marbury, Dennis Ramsey, Robert Townsend Hooe, and William Harper. Late on the

* Act of February 27, 1801.

† Executive Journal of the Senate, March 2, 1801.

third the Senate approved, and toward midnight the four commissions, duly made out, were signed by the President, were sealed by Marshall as Secretary of State, and lay on his table when James Madison succeeded him. These were the famous "midnight judges." Every step, the passage of the law by both Houses, the nomination of the men by the President, the approval by the Senate, the signing and the sealing of the commissions, was regular and according to law. Yet, in the eyes of Jefferson, the commissions were null and void. By a process of reasoning peculiar to himself, he admitted that the power of Adams to sign acts of Congress continued to the fourth of March, 1801, but asserted that the power of Adams to sign commissions ended on the twelfth of December, 1800, the day whereon men first felt sure that the Republicans had carried the election. He declared, therefore, that every appointment made between December twelfth, 1800, and March fourth, 1801, should be disregarded,* and forbade the commissions to be issued. Madison obeyed; the justices went to law, and, at the December term, 1801, Marbury moved the Supreme Court for a rule commanding James Madison to show cause why a mandamus should not issue. The rule was granted, and the fourth day of the next term set down for a hearing. But before the next term came the Judiciary Act was amended, the August term abolished, and the sitting of the Supreme Court thus suspended for fourteen months.

Meanwhile the President began a third attack. On the bench of the New Hampshire District Court sat a judge named John Pickering, and before him in October, 1802, came a case which brought about his judicial ruin. A ship, named the Eliza, had entered her cargo at the port of Boston, and with proper papers had gone to Portsmouth to break bulk. There the captain, for mere convenience, put ashore some pieces of check linen and two cables bought in foreign parts. For this his ship, with her furniture, her tackle, and her apparel, was seized by the surveyor of the district. The case came for trial before Judge Pickering, who promptly ordered the ship and goods restored to the owner; but they

* Jefferson to General Henry Knox, March 27, 1801.

were immediately libelled by order of the Collector on the ground that the judge had been drunk and the proceedings most irregular. In the November following, a special session of the Court was held, and the libels against the ship and cargo brought to trial. But the judge was so drunk, his language so incoherent and profane, his behavior so wild, that a postponement to the following day was asked. "My dear," said the judge to the attorney, "I will give you to all eternity," and adjourned the Court, remarking as he did so that to-morrow he would be sober. When, however, the morrow came, and he took his seat on the bench, he was as drunk and irrational as before. The libel on the cables came up first. But after a couple of witnesses had been heard for the claimant, Pickering suddenly declared that both vessel and cargo should be released, and bade the clerk enter the decree. In vain the District Attorney reminded him that but one side had been heard, and asked leave to bring forward witnesses for the prosecution. "You may," said Pickering, "bring forty thousand, but they will not alter the decree." The attorney then demanded an appeal to the Circuit Court, but the counsel for the defendant declared the value of the cables was not great enough to allow an appeal, and the judge refused to grant one. With this and a torrent of jargon from the bench the trial ended. Enraged at such treatment, the Collector drew up a statement of the behavior of Pickering, gathered a bundle of papers and affidavits relating to the scenes in Court, and sent them to Jefferson.

That Pickering was no longer fit to sit on the bench was clear to everybody. That he ought to be relieved was undeniable; nor was it impossible to relieve him. The twenty-fifth section of the Judiciary Act of 1801 made provision for just such cases. Whenever a district judge, the law read, became unable to attend to his duties, the Circuit Court should name one of its members to fill his place so long as his disability continued. Indeed, the Circuit Court for the eastern circuit had done this very thing for Pickering in 1801. It might have done so in 1802. But a fine chance to turn out a Federalist would thus be lost, and Jefferson determined to get rid of Pickering by impeachment. This decision reached, he sent

the papers with a message to the House of Representatives.* Redress, he declared, was not within the power of the President. It was, however, within the power of the House, if, in their opinion, redress was needed. Taking the hint, the House referred the papers to a committee of five, from whom, two weeks later, came a report that John Pickering ought to be impeached.†

The purpose of the impeachment was not misunderstood. The Court and the President were at war. The issue was promptly accepted, and the next week Chief Justice Marshall hurled back a defiance from the Supreme bench.‡ The opportunity for this defiance was afforded by the famous case of Marbury against Madison. At last, in February, 1803, the Court, after fourteen months' suspension, met, heard counsel for Marbury, and handed down a decision. Marshall delivered it. A commission, he explained, was not necessary to the appointment of an officer by the President. The document was evidence of appointment, but no part of it. When such a commission for an officer not removable at the will of the Executive had been signed by the President and sealed by the Secretary of State, it was not revocable. The officer then had a vested legal right to it, of which neither the Secretary nor the President could deprive him. The duty was not one depending on the discretion of the President. It was prescribed by law and must be performed. A mandamus ought therefore to issue, not from the Supreme Court, but from the District Court. Should the Supreme Court mandamus the Secretary of State, it would be exercising an original jurisdiction not granted by the Constitution.

When Jefferson read the decision he was more incensed against the Court than ever. The bold language in which the Chief Justice had defined the Executive power, had set forth the Executive duties, had accused the President of violating a vested legal right, above all, the unusual way in which the decision had been made, could mean nothing else than defiance. The whole case turned on the question of jurisdiction. As the Court had none, Marshall, had he followed the usual custom,

* February 3, 1803. † February 18, 1803. ‡ February 24, 1803.

would have said so in a few words and sent Marbury to the District Court of the United States for the District of Columbia. But he did not, and went out of his way to express an opinion on the conduct and the powers of the President and his Secretary, an opinion quite out of place in a court having no jurisdiction in the matter he was discussing.

Jefferson justly felt that John Marshall had openly defied him. His friends shared this feeling and went forward more eagerly than ever in their new attack on the last remnant of Federal power. The Executive branch of Government was Republican, the Legislative branch was Republican, and it would go hard with them if, in turn, the Judicial branch was not Republican also. Nobody was surprised, therefore, when, taking up the report of the committee on Judge Pickering's case, the House, by the unanimous vote of the Republicans, sent John Randolph and Joseph Nicholson to the bar of the Senate and, in the name of the House of Representatives and all the people of the United States, impeached John Pickering of high crimes and misdemeanors.* A few hours later the seventh Congress expired, and the impeachment proceedings went over to the next session of the Senate. When that time came all was in readiness for the impeachment of another judge, and of that judge who, of all men on the Supreme bench, was the most offensive to Republicans, Samuel Chase, of Maryland.

Just after the close of the February term of the Supreme Court, Chase had gone upon his circuit, and May second addressed the Grand Jury at Baltimore. The charge was much in his old-time style. It began with matters appertaining to the jury and ended with matters appertaining to politics. He could not, he said, suffer the jury to go to their chamber without a few words on the welfare and prosperity of the country. Not constitutions, but well-secured rights, made a people free and happy. All history taught that a monarchy might be free, that a republic might be enslaved. Where laws were made without respect to classes, where justice was meted out alike to rich and poor, where wealth gave no protection to violence,

* March 3, 1803.

and where the property and person of every man were quite secure, there the people were indeed free. Such was the present condition of the United States. Where laws were partial, arbitrary, and uncertain; where there was one kind of justice for the rich man, and another kind of justice for the poor man, where property was no longer safe, and where the person was open to insult without redress by law, there the people were not free, whatever form of government they possessed. To this situation he greatly feared the United States were going. The repeal of the Federal Judiciary Act, the sweeping away of sixteen circuit judges, the changes in the State Constitution of Maryland, the establishment of universal suffrage, the proposal to reform the State judiciary, were signs not to be mistaken. They would, in his opinion, surely and quickly destroy all protection to property, all security to personal liberty, and sink the country into a mobocracy, the worst kind of government known to man.

So much of the charge as related to politics at once found its way into the columns of the American and the Anti-Democrat, of Baltimore, and the National Intelligencer, of Washington, and was read by Jefferson with astonishment and delight. Astonishment at the boldness of the attack. Delight that the man who had twice condemned Fries to the gallows, and had sent Callender to the jail, was at last within his power. Not a moment did he hesitate what to do. The factious judge should be impeached, and impeached by Joseph Nicholson. For two reasons Nicholson seemed the most fit man. Chase had attacked the State of Maryland. Nicholson was a representative from Maryland, and might well become her defender. But, more than this, he was already charged with the management of the impeachment of one judge, and might well undertake the impeachment of another. To Nicholson, therefore, Jefferson wrote at once, and urged him not to let the "seditious and official attack" of Chase go unpunished.

While Nicholson was trying to make up his mind just what to do, some advice was given him by the Baltimore American. In the Court-room, on the day Judge Chase read his charge, was John Montgomery, a member of the Maryland Legislature, and the framer and foremost defender

of the measures the judge declared were fast ruining the country. Every eye in the audience was therefore turned on him. Every word uttered, every denunciation made, seemed to be levelled at him. He was filled with rage, and, as he went down the Court-house steps, was heard to declare that for this Judge Chase should be impeached. Going home, he sat down, and, while in hot blood, wrote an article for the American,* urging impeachment. A judge of the Supreme Court, he wrote, holds office during good behavior. Has Judge Chase behaved well? He has debased himself to the level of a turbulent, dissatisfied demagogue. He has uttered words likely to bring the Government and the laws into contempt and disrepute. He has laid aside his judicial duties to stir up discontent, and richly deserves to forfeit his office. It must rest with Congress to wipe away this defilement of the Court by removing from the bench the rubbish which has caused it.

The cry for impeachment, thus begun, grew stronger and stronger as the summer wore on, and greatly encouraged Nicholson. His friends, it is likely, were freely consulted. One at least is known to have been, and advised him to have nothing to do with the matter. That Chase had been guilty of misbehavior was far from certain. That the language of his charge was such as to call for punishment was very doubtful. Even if it was, Nicholson ought not to be the prosecutor, as he would, in all probability, be Judge Chase's successor. This sound advice was partly taken, partly rejected. When Congress met, the impeachment was moved, but it was moved by John Randolph.

He, too, thought the language of the Baltimore charge was no ground for impeachment, and went back to the conduct of Chase in the trial of John Fries. He reminded the House that, at the last session of Congress, a member from Pennsylvania had, in his place, stated facts regarding the official conduct of Judge Chase which he thought the House was bound to notice. The member referred to was John Smilie. The statement of facts referred to was made in the course of a de-

* "Upon the Liability to Impeachment of J. Chase for Alleged Misbehavior in Office," American, June 13, 1803.

bate on the Judiciary Bill. Observing that Judge Chase had been assigned to the circuit in which Pennsylvania lay, he protested and begged to have the judge put on some other circuit, alleging that Chase was obnoxious to the people of that commonwealth. He was asked why Chase was obnoxious to the people of Pennsylvania, and told the story of the trial of Fries; how the counsel for the defendant were insulted, and browbeaten, and driven from the Court; how the prisoner was tried without counsel, convicted, and sentenced to be hung; and how, when Adams heard of the conduct of the judge, he pardoned Fries. When this statement was made the session, Randolph said, was too far gone to take up the charges. But he had since looked into them; he believed them to be true, and, so believing, moved for a committee of investigation. The Republicans were delighted; those who came from Pennsylvania were particularly so, and the next day secured an amendment coupling Judge Peters with Chase, for Richard Peters was the district judge who sat with Chase at the trials. As thus amended, the motion was stoutly opposed by the Federalists, and by some who were not Federalists, as wholly irregular. Not a charge, they said, has been made. Not a complaint has been heard. Yet we are called on to order a committee to investigate the conduct of innocent men, with a view to impeachment. This is most unparliamentary. Specific charges must go before investigation. Such has always been the custom, both in England and the United States. Before Blount was impeached the President sent documents to the House. When Pickering was to be impeached the same course was taken.

The Republicans asserted that the method of procedure proposed by Randolph was parliamentary. Precedents being demanded, they cited the case of Strafford, in the reign of Charles I; of Bolingbroke, of Oxford, of Ormond, in the reign of George I; of Sir Robert Eyres, Chief Justice of the Court of Common Pleas, in 1730; of Warren Hastings, in 1786; of St. Clair, in 1792; and asserted that, as the House of Representatives was the Grand Inquest of the nation, it had power to act after the manner of a Grand Jury or the Legislature of a State.

It mattered little, however, what they said. Neither side convinced the other. The resolution passed; a committee reported in favor of impeaching Chase, but not Peters; and two members of the House were despatched to the bar of the Senate, where, in the name of the House of Representatives, and of all the people of the United States, they impeached Samuel Chase of high crimes and misdemeanors. A better time could not have been chosen, for on the preceding day the Senate, sitting as a High Court of Impeachment, had pronounced sentence on John Pickering.

That shameful piece of business which passes by the name of Pickering's trial began early in January, 1804, by the House exhibiting four articles against him. The first and second charged him with having on two separate occasions, and in open violation of law, delivered the ship Eliza to her owners after she had been seized for smuggling. The third accused him with refusing to allow an appeal to the Circuit Court, thereby wickedly meaning and intending to injure the revenue of the United States. The fourth declared that he was on both these occasions drunk, blasphemous, and in his behavior a disgrace to the bench. Some weeks were now consumed by the Senate in examining precedents, preparing oaths for officers and witnesses, drawing up forms of subpœnas, and arranging the chamber for the use of the Court. By March second all was ready, and on that day the Court was opened and the name of John Pickering three times called; but there was no answer. The judge did not appear either in person or by counsel. In his place came a petition from his son, and a letter from Robert Goodloe Harper. The petitioner alleged that when the crimes charged were done, Judge Pickering was insane, and had been insane for two years; that he was physically unable to attend the Court, and asked that the trial be put off, and an order issued to take depositions to be received in evidence of insanity. The letter stated that the petitioner was too poor to come to Washington, and requested that Harper be allowed to appear and support the petition. Mr. Harper was then invited within the bar, and addressed the Court. He assured it that he acted in no sense as the attorney of Judge Pickering, who was too insane to select an

attorney. He came, as the friend of the son, to ask for a postponement of the trial. The question now before the Court was, Will the Court hear evidence and counsel respecting the insanity of John Pickering? The day being Saturday, and the question of much importance, the Court adjourned till Monday. On Monday, late in the afternoon, the decision was reached to grant the prayer and hear the evidence. But on Tuesday the managers for the House announced that they would go on with the trial, but would not listen to the evidence. They would support the articles of impeachment, but they would not discuss a question raised by a third party unauthorized by the accused. Thereupon the whole body of managers, with attorneys and witnesses, marched out of the chamber and left the Court to itself. Having listened to the evidence in support of insanity, the Court rose, sent word the next day to the House that it was ready to go on with the articles of impeachment, and spent the day following in listening to the testimony of the prosecution. The testimony all in, the managers rested their case and withdrew. After a delay of another twenty-four hours John Pickering was declared guilty, as charged, and removed from office.

No act so arbitrary, so illegal, so infamous had yet been done by the Senate of the United States. Without a hearing, without counsel, an insane man had been tried and, on *ex parte* evidence, had been found guilty and punished. It was on the twelfth of March that this verdict was rendered; and that same afternoon the House voted to impeach Samuel Chase. John Randolph and Peter Early were then sent to inform the Senate, and the Senate took order accordingly. But, the close of the session being near at hand, the exhibition of articles of impeachment went over to the next winter. At last, on December sixth, all was ready. The articles were then approved, the managers were then chosen, the clerk was then sent to tell the Senate that the House was ready to exhibit the articles, and the House was then informed by the Senate that the next day at one o'clock would be the time. The ceremony gone through with on that day was thought most imposing. Precisely at one the managers presented themselves at the door of the Senate chamber, were admitted,

and sat down within the bar. The sergeant at arms then proclaimed silence. John Randolph then rose and read the articles through. Burr, in behalf of the Senate, declared that due order would be taken, and the managers, having delivered the paper at the table, withdrew.

A month now passed before the trial began, for notice had to be served on the judge, rules drawn up for the guidance of the Court, and, what greatly pleased the Federal newsmongers, the Senate chamber had to be draped in feeble imitation of that splendid hall in which Warren Hastings had been tried and acquitted Can these Democrats who are fitting up the court of impeachment with red hangings and green hangings, with crimson boxes for the triers, and with blue boxes for the managers, all in the latest English style, can these, it was asked, be the men who, a few years since, found fault with our judges for wearing gowns, with our President for his receptions, his levees, his speeches to Congress from the throne, nay, with Congress for marching through the street with an answer to the speech, and for sitting on chairs made of mahogany from the British colonies? Nor were such scoffs undeserved. In a city in a desert; in a city without houses, without people; in a building not yet half erected men, avowedly the simplest of republicans, were imitating the finest piece of ceremonial witnessed in England in the course of the eighteenth century.

On the right and on the left of the chair of the Vice-President were two rows of benches covered with crimson cloth. On these the senators were to sit in judgment. Before them was a temporary simicircular gallery, raised on pillars and covered, front and seats, with green cloth. To this the women came in crowds. Under the gallery were three rows of benches rising one above the other, likewise covered with green cloth, and set apart for the heads of departments, foreign ministers, and the members of the House of Representatives. In front of this amphitheatre, and facing the right and left of the Vice-President, were two boxes covered with blue cloth. One was occupied by the managers, the other by the accused and his counsel.

Neither of these boxes was occupied on the opening day.

The proceedings were merely formal. The Senate attended. The Secretary read the return of the summons. The name of Samuel Chase was called. So closely had English precedent been followed that no seat had been provided for the culprit, but notice had been given that, if he requested it, a chair would be brought to him. The judge was told the Senate was ready to hear his answer. His answer was short and temperate. He denied that he had committed any crime or misdemeanor whatever; denied, with a few exceptions, every act with which he was charged; spoke of the importance of the impeachment not only to himself, but to the cause of free government, and asked till the next session of Congress to put in his answer and secure counsel for trial. He was given till the fourth of February.

The time was not given grudgingly. The prosecutors were quite as eager for delay as the accused, for the prospect of success was poor indeed. Thirty-four men had seats in the Senate. Of the thirty-four, nine were Federalists, twenty-five were Republicans, and the votes of twenty-three were needed to convict. But the votes of no more than twenty could be counted as sure. Over the Court presided Aaron Burr, the implacable hater of Jefferson and all his ways. Below, on the crimson benches, sat Stephen Bradley, of Vermont, who in private had denounced the impeachment of Pickering, and had never been heard to approve of that of Chase; and Israel Smith, who followed where Bradley led. There, too, sat Samuel Mitchill and John Smith, of New York, who, as members of the House of Representatives, had voted against the motion for a committee to inquire into the conduct of Justice Chase. It was feared that the blandishments of Burr would draw away the vote of John Smith, of Ohio. To win over these malcontents was most important, and in the attempt to do this the month of January was spent.

To Jefferson fell the task of mollifying Burr, and the task was well performed. In a few weeks the treatment of the man so lately denounced as a trickster and a renegade underwent a marked change. The National Intelligencer ceased to abuse him. Madison became gracious, Gallatin grew

friendly, Jefferson overwhelmed him with invitations to dine. Giles framed a petition to the Governor of New Jersey, begging him to quash the indictment found against Burr by the Grand Jury of Bergen County, and passed it about the Senate for signature. Nay, there is reason to believe that he was even promised that share of patronage so long withheld. Two bills were then before Congress. One reorganized the government of Orleans; the other turned the district of Louisiana into the Territory of Louisiana, and gave it a government of its own. Neither bill was signed by Jefferson till the impeachment trial ended in failure, and Burr had but two days to serve. Yet, even then, when he had ceased to be Vice-President, when his career was run, well-paid places were found in the new government for his connections and his friends. His step-son was made Secretary of Louisiana. The brother-in-law of his wife was made a judge of the Superior Court of Orleans. His old friend Wilkinson was made Governor of Louisiana, for the hope of rending that Territory from the Union was never for a moment absent from his mind. That such places were put at the disposal of Aaron Burr without a mete return from him is not for a moment to be supposed.

To Giles, of Virginia, meanwhile had been given the task of securing the doubtful and discontented senators. All that could be done he did. He argued with the doubters. He strove to appease the rebellious. He toiled earnestly to do away with the terrors and gravity of impeachment. It was not, he maintained, such a dreadful thing as it seemed. Men could be impeached for high crimes and misdemeanors; but they could also be impeached and removed for offences that were neither high crimes nor misdemeanors. Such was the case of John Pickering. He was insane. He was not responsible, and could not, therefore, be guilty of a crime. Yet he had been removed. And why? Because he could not with safety be intrusted with the duties of a judge. Such was the case of Justice Chase. His impeachment did not imply crime or corruption. It was a notice that he held opinions hurtful to the welfare of the country, and could no longer keep his place. Thus was it that impeachment might become an in

quest into the behavior of an officer, a civil investigation, not a prosecution of crime. This being the case, Giles declared that the Senate ought not to take on the form of a court; ought not to use the word in its rules; ought not to swear the members as judges; ought not to have the Secretary swear the witnesses; nor open the proceedings with the ancient cry of Oyez! Oyez! Oyez! But the labor and the arguments of Giles were in vain, and the fourth of February came with the five senators as ill-disposed as ever toward conviction.

On that day, for the first time, the managers and the counsel for the accused appeared in their boxes. The month allotted the defendant to secure counsel and make ready for trial had been well spent, and he now confronted his accusers with an array of legal talent such as had never yet assembled in the city of Washington. Beside him stood Luther Martin, a man without an equal at the Maryland bar; Robert Goodloe Harper, Charles Lee, Philip Barton Key, and Joseph Hopkinson, a young man just turned thirty-five, who, having defended Fries before Judge Chase, was now to defend Judge Chase against the charge of oppressing and unjustly treating Fries. As counsel for the House were the managers, John Randolph, George Washington Campbell, Joseph Nicholson, Cæsar Augustus Rodney, John Boyle, Peter Early, and Christopher Clark. The first day was taken up with reading the plea of Judge Chase and calling the roll of the witnesses. An adjournment, the opening speech of John Randolph for the managers, and the examination of witnesses consumed two weeks more, so that the middle of February came before the arguments began in good earnest. Eight articles had been exhibited. Two set forth his arbitrary, oppressive, and unjust treatment of Fries. Two more charged him with having oppressed James Thompson Callender by forcing a prejudiced juror to serve, by ruling out evidence, by acting so partially, so intemperately, so cruelly, that the counsel for Callender had been compelled to abandon their client and their case. Two others accused him of violating the laws of Virginia by issuing a capias against the body of Callender instead of a summons, and by trying the prisoner at the same term at which he was indicted, though the law declared that

he should not be tried till the term next following. The seventh alleged that he had refused to dismiss a Grand Jury at New Castle, Delaware, till it indicted a printer on trial for sedition. The eighth was concerned with his conduct at Baltimore in May, 1803; charged him with seeking to stir up the anger of the jury against the government of Maryland and the Government of the United States, and with "prostituting the high judicial character with which he was invested to the low purposes of an electioneering partisan."

Grave as the offences charged might seem in the eyes of good men zealous for what they called the dignity of the bench and the purity of the ermine, they were no offences at all in the eye of the law. Not a principle of common law, not an act on any Statute Book, could reach them. How, then, it was asked, can Justice Chase be impeached? His acts were indeed unwise, in bad taste, greatly to be regretted. But he had committed no high crime. He had been guilty of no misdemeanor. The answer was the argument of the managers.

The difference, said one of them in substance, between the terms crimes and misdemeanors as used in the laws, and the terms high crimes and misdemeanors as used in the Constitution, is precisely the difference between indictment and impeachment. The murderer, the forger, the common thief must be arrested, then indicted and tried. The criminal, in the meaning of the Constitution, is never arrested. No process issues against his body. No indictment ever sends him to jail. He is merely summoned to appear at the bar and answer the charges against him. The indicted criminal, again, may be deprived of his life, of his liberty, nay, even of his property by heavy costs and fines. The impeached criminal can be deprived of nothing but office and the right to hold office. Does not this difference in the way of trying and in the kind of punishment inflicted mean a difference in the nature of the crimes? Does it not mean that where an indictment lies, an impeachment will not? A judge may undoubtedly be indicted for murder? Will any one contend that he may be impeached for murder? Assuredly not, for no man can be tried twice for the same offence. Impeachment, then, lies for abuse of power done by an officer in his

official capacity, by a judge on the bench, by the Vice-President in his seat; indictment lies for acts done by men acting as men and not as officers.

Joseph Hopkinson, who opened for the culprit, answered this. The difference, said he, between acts impeachable and acts indictable is simply this: Every act impeachable is also an act indictable; but every indictable act is not an impeachable act. If this be true, it follows that a man may be both indicted and impeached for the same offence; that he may, in the language of the managers, be tried twice for the same act. And so he may. For what other meaning can be given to those words of the Constitution, so strangely overlooked by the managers, those words which follow close on the provision for impeachment, the words, "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law"? Impeachment, then, is no bar to indictment. Indictment is no bar to impeachment. The same man may suffer both for the same crime. But the House cannot impeach him for an act for which a Grand Jury could not indict him. To the House of Representatives, it is true, is given sole power to impeach. So also to grand juries is given sole power to indict. But, as grand juries cannot indict for what is not indictable, so the House of Representatives cannot impeach save for what is impeachable. And what is impeachable? Treason, bribery, and "other high crimes and misdemeanors." The meaning of this is clearly high, not petty misdemeanors.

Were I to say there are attending this tribunal many ladies and gentlemen, would I not be understood to mean many ladies and many gentlemen? The Constitution says that "a regular statement and account of the receipts and expenditures of all public money shall be published from time to time." Does not this mean that the account must be regular as well as the statement? Consider again with what "misdemeanors" are associated. They are associated with treason, with bribery, with high crimes; they are tried in precisely the same manner; they are punished with precisely the same penalties. Consider who are the judges. Not magistrates, not justices of the peace, but the highest branch of the highest legislative body in

our land. Are we to suppose that the Constitution means that public business shall be delayed while the Senate sits day after day to scan and punish errors and indiscretions too petty to be named in the penal code, too insignificant to be noticed by a Court of Quarter Sessions? Far from it. The Senate was never formed to fix the standard of politeness for a judge, to mark out the limits of judicial decorum.

Luther Martin took the same position as Hopkinson, but added nothing to the argument. Harper went further; narrowed the position taken by his colleagues; maintained that impeachment was a criminal prosecution; that it must be founded on an open violation of law; and cited the Constitutions of Pennsylvania, of Delaware, of Maryland, of Virginia, of North Carolina, and of Georgia to prove that such was the meaning attached to it. After explaining his doctrine of impeachment Hopkinson took up the first article. To Philip Barton Key were given articles two, three, and four. Charles Lee then took up the fifth and sixth. Luther Martin followed. To refresh the memories of the senators, he restated the constitutional arguments of Hopkinson, discussed articles two to six in order, tore them to pieces, and, with a glee but half concealed, expounded the law of Maryland and Virginia to Nicholson and Randolph. Harper then dealt with the seventh and eighth articles and closed the case for the defendant.

On the part of the managers all was perplexity, doubt, and confusion. One declared that impeachment was a mere inquest of office. Another denied this and maintained that it was a criminal prosecution, and limited to "treason, bribery, and other high crimes and misdemeanors." A third in turn denied this, and asserted that the Constitution put no limit on impeachment. Nor was the plan of discussing the articles a happy one. Campbell and Early and Rodney each in turn went over every article save the fifth and sixth. Nicholson spoke briefly and feebly on the first, second, and third. Clark alone touched on the fifth and sixth, and his speech did not take up ten minutes of time. Randolph closed for the managers. Of law he was totally ignorant. What logic was he did not know. With his shrill voice raised to the highest pitch, with his face distorted, with his body twisted into horrid

shapes, weeping, groaning, bursting into sobs, he rambled on, misstating facts, misquoting laws, heaping abuse on all his enemies, till he broke down from sheer exhaustion.

To such a trial there could be but one ending, and that ending was defeat. But the accused and his counsel were not prepared for a defeat so crushing as now fell on the managers. When Randolph had finished, the Court fixed Friday, the first of March, at noon, as the day and hour for pronouncing judgment. At that time the Senate chamber was crowded to its utmost. The crimson benches of the senators; the green benches of the representatives; the women's gallery; the public gallery; the boxes where the wives of the Secretaries sat, could not have held one person more. Not a senator was absent. Even Tracy, still sick, was brought to the Capitol in a coach and carried to his seat, that he might vote.

Shortly after noon Aaron Burr took the chair, bade the Secretary read the first article of impeachment, announced that the question would be put to each member on each article separately, and that the form of the question would be: "Is Samuel Chase guilty or not guilty of a high crime or misdemeanor as charged in the article just read?" The Secretary then proceeded to call the roll and record the vote on Article one. As this was first in order, so was it first in importance. On the charges it contained, Randolph had moved for the committee to look into the behavior of Judge Chase; on these charges the impeachment had been based; on these the managers had spent the most care and argument; and if on these Chase could not be convicted, there was no hope of convicting him at all. Yet, when the last name was called, but sixteen senators had answered "Guilty." On the fifth he was unanimously acquitted. On the eighth, the substance of which was that charge to the Baltimore jury which roused Jefferson to suggest his impeachment to Nicholson and stirred up Montgomery to demand it in the American, nineteen pronounced him guilty. This was the greatest vote the managers obtained. As soon as it was recorded, Burr rose, looked toward the box in which the accused sat, pronounced him acquitted, and bowed. The judge bowed in return.

The Court adjourned not to meet again, and the great trial was ended.*

As the friends of Chase gathered round to congratulate him, the members of the House of Representatives hurried back to their chamber. When a few minutes had been spent in the transaction of business, the shrill voice of John Randolph was heard calling to the Speaker. He was beside himself with rage and disappointment. Wherever he went, in public, in private, nay, in the Court of Impeachment itself, he had loudly boasted that the glory of the work was his. Was he not the first man to ask for impeachment? Was it not his hand that framed each article? Was it not his skill that directed the managers? To find on a sudden that there was no glory; not only to fail, but to fail most miserably, was indeed hard to bear. Worn out with his toil, half sick, irritated beyond endurance, his pride cast down, his leadership gone, his one longing was for vengeance, and he sought it where it was least likely to be found. Rising in his place, he moved an amendment to the Constitution. The attempt to get rid of judges by impeachment had failed. He would therefore have the Constitution so changed that in future they should be removed by the President on joint address of both Houses of Congress. This slur on the judicial fairness of the Senate was followed by one worse yet from Nicholson. Republican senators had presumed to vote for the acquittal of a judge impeached by Republican representatives. That they should do such an act and keep their seats was intolerable. He, too, would have the Constitution amended and an article added giving the States power to recall their senators at any time they might think proper. By a party vote the two resolutions were referred to the next Congress.

A quarrel now arose over the payment of witnesses. The House would pass no bill which provided for the payment of those summoned by Chase. The Senate would pass no bill which did not. A conference followed. Each refused to yield, and the bill was lost. Randolph, more angry than ever, then

* Report of the Trial of the Hon. Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, before the High Court of Impeachment, &c. Taken in short-hand by Charles Evans. Baltimore, 1805.

attempted, in the closing hours of the session, to have the witnesses for the managers paid out of the contingent fund of the House. But the Federalists were ready, hurried from the room, and, when the vote was taken, the Speaker announced no quorum. Members were thereupon summoned from the lobby and committee rooms. Hardly were they in their seats when a message from the President was announced. While the clerk was reading it the Federalists again left the room, so that, when the resolution was a second time called up, there was a second time no quorum. Once more the sergeant at arms went into the lobby. Once more the members came in. But an enrolled bill was now reported, and while the Speaker signed it, the Federalists a third time slipped out. The announcement of no quorum which followed was greeted with shouts of laughter. Randolph, in a great passion, desisted, and, late on the evening of Sunday, the third of March, 1805, the eighth Congress ended. On the following day at noon Jefferson was a second time inaugurated President of the United States.

The campaign may be said to have begun with the passage by Congress of what is now the twelfth article of the amendments to the Constitution. As the Constitution then stood, each elector voted for two men without designating in any way which he wished to be President and which Vice-President of the United States. The election of 1800 having shown to what evils this plan could give rise, it was now proposed to prevent the recurrence of a contest in 1804 by amending the Constitution. Accordingly, on October seventeenth, the very day the session began, a twelfth amendment, providing that in future elections of President and Vice-President the persons voted for should be particularly designated, was introduced. When the House sent the resolution to a committee of seventeen it was short and general; but, when the committee reported to the House, the resolution was long and specific. There was still to be a separate ballot for each officer. But, if no man received a majority of the electoral votes for President, the names of the five highest on the list of candidates were to go before the House of Representatives, and the House was to elect one of them President. For the election of a

Vice-President the committee did not think a majority necessary. Whoever had the greatest number, whether a majority or not, was to be considered elected. It might happen that two or more names should receive the same vote, and that vote be the highest. In such cases the Senate was to decide who should be Vice-President.

The debate which now took place was interesting and instructive. Little was said on the need of amendment, or on the merits of the proposed amendment. Much was said on State-rights, and on this question the two parties completely changed sides. The Federalists became the defenders of State-rights and strict construction; the Republicans the defenders of a national, a consolidated Government.

"We hold," said the Federalists, "that our Constitution ought never to be changed till we are sure the change will do no harm to the Constitution itself. What, then, is our Constitution? It is a compact between independent and sovereign States. It is a bargain, a perfect compromise of the interests, the rights, powers, influences of a number of independent societies, and is no further binding on the makers than is set forth in the written document. Who were the makers of this compact? Did the people, acting on the worn-out theory of common wants and common necessities, meet on a great plain and then and there form a body-politic? They certainly did not. Did the people choose delegates as the members of Congress are chosen, and send them, duly instructed, to frame a compact? They certainly did not. Of that noble band of patriots who, in May, 1787, met at Philadelphia, not one was the direct representative of the people. Not one was chosen by the people at large. Not one was deputed to express their wishes, to guard their interests, to explain their views. Each was sent by the government of his State, and held his authority from his State as a State, and not from the people. The States, therefore, and not the people, formed the compact called the Constitution. Having been made by the States, it follows that no change ought to be made in the compact which can in any way harm the rights of the States. But the proposed amendment does affect, and injuriously affect, the rights of the small States. The President is now chosen

in either of two ways: He may be selected by electors distributed among the States on the basis of population. This gives the great States an advantage over the small. He may be chosen by the House of Representatives, each State casting one vote. This makes the small States equal to the great ones. But election by the House may be produced in either of two ways: First, when two or more persons have the same number of electoral votes, and that number is a majority of all the votes cast; second, when no person receives a majority. Accept the proposed amendment and one of these cases can never arise, for it will then be impossible for two men to have at the same time an equal vote and a majority. The effect of the amendment, if carried, will thus be to strip the small States of one opportunity to have an equal vote with the large States in the election of a President. Not only will it give the election of President to the great States, but the election of the Vice-President also; for, if the great States can elect the one, they can, by the same vote and in the same manner, elect the other. The proposition is therefore an attack on the rights of the small States." *

"The proposition," the Republicans answered, "is nothing of the kind. The Constitution is an experiment and ought to be amended whenever experience shows an amendment to be necessary. This the experience of 1800 has shown to be necessary. To say that the remedy now offered is an attack on the rights of the small States is refuted by its history. It has been called for by Eastern States, Middle States, Southern States, Federal States, Republican States; by States both great and small; by a South Carolina member in 1797; by a Kentucky senator in 1798; by New Hampshire and Vermont in 1799. Massachusetts approved the action of Vermont in 1800. From New York, from Pennsylvania, from North Carolina, and now from Virginia, have come similar calls. Can it be said, in the face of this, that the proposition is sectional, or partisan, or harmful to the small States? Let it be remembered, again, that the States, not Congress, amend the Con-

* See the speeches of G. Griswold, of New York, and Benjamin Huger, of South Carolina, October 28, 1803. Also that of R. Griswold, of Connecticut, on December 8, 1803. Annals of Congress, 1803–1804.

stitution. Congress can but propose. The assent of three fourths of the State Legislatures is necessary to make the proposition an article of the Constitution. Are three fourths of the States in the Union large States? No. How, then, can the small States be stripped of any rights?" When the vote was taken for the last time the yeas were eighty-eight and the nays thirty-one.*

Without an hour's delay the resolution was hurried to the Senate,† and there ordered to lie for consideration. But the Senate did not consider it, and, early in December,‡ sent a resolution of their own to the House. Again the Federalists rallied for the attack. They began by arguing that the House, having sent a resolution to the Senate, and the Senate having given it no heed and having sent an entirely different resolution on the same subject to the House, had insulted the House, and moved that all action be put off till the Senate did consider the House resolution. Defeated in this, they next raised the cry of unconstitutionality. To send a proposed amendment to the States required, in the language of the Constitution, the affirmative vote of "two thirds of both Houses." The Senate then consisted of thirty-four members. Two thirds of thirty-four was twenty-three. But the resolution had passed by a vote of twenty-two to ten. It had not, therefore, according to the Federalist view, been constitutionally passed, and could not be considered. When this had been settled by argument and by citation of precedents, and settled to mean two thirds of the members present when the vote was taken, the Federalists asked a postponement that they might bring forward an amendment to the resolution providing for the choice of electors by districts. This was refused and the debate on the Senate resolution began. The Republicans were determined to pass it, and, though the Federalists attempted to mutilate it by abolishing the place of Vice-President, by changing the language of some of its phrases, by striking out the provision that the Vice-President shall act as President when, the right of election devolving on the House, the House shall fail to exercise it before the fourth day of

* October 28, 1803. † October 28, 1803. ‡ December 5, 1803.

March next following, sent the resolution to the States just as it came from the Senate.* The time was fortunate. The Republicans had never been so enthusiastic. Jefferson was never so popular. The Legislatures of the States were soon to meet; a presidential election was near, and it was hoped that they would therefore act with promptness. But their promptness surpassed expectation. When March ended, ten States had ratified. Three more did so before August came. Of the seventeen States, Massachusetts, Connecticut, and Delaware alone rejected it. Each of them declared it unnecessary, impolitic, and unconstitutional. Unnecessary because it was an innovation dictated by party spirit, and not by real need. Impolitic because it reduced the power of the small States when a President was to be chosen by the House of Representatives by limiting the choice to three instead of five names, and destroyed their influence when a Vice-President was to be elected by the Senate. Unconstitutional because it did not secure two thirds of all the votes of both the House and Senate. In New Hampshire, the Legislature having passed the amendment, the Governor sent it back with his veto. But the veto was of no avail, and in September the Secretary of State notified the governors that the twelfth amendment was in force.

The amendment having gone out to the States, the Republican congressmen at once began to make ready for the election, which they hoped would take place under it. In many of the States the custom of selecting party candidates in a caucus of the party members of the Legislature was not unknown. But not till 1804 was the custom formally applied to the selection of candidates for Federal offices. In that year a few of the Republican senators and representatives at Washington called a caucus to meet on the twenty-fifth of February in the Capitol. One hundred and ten came. Stephen Roe Bradley, of Vermont, was put in the chair, and Thomas Jefferson renominated for President of the United States by acclamation. A ballot was then taken to determine who should be the candidate for Vice-President. Six names were

* December 8, 1803. Yeas, 83; nays, 42.

voted for, but George Clinton was chosen.* A committee of one from each State was charged with the conduct of the election.† No formal nominations were made by the Federalists. They agreed, however, to support Charles C. Pinckney and Rufus King.

In most parts of the country the campaign which followed was without incident. But in New England, where it was well known that Democracy had of late been making great progress, the struggle was the bitterest yet waged over a presidential election. The very closeness of the contest spurred on each side to do its utmost, and drove each, before November came, to commit acts both shameful and unjustifiable. In Massachusetts the Federalists repealed the law for the choice of electors. In Connecticut the Republicans labored earnestly to break down the State Constitution. Massachusetts was then entitled to nineteen presidential electors. Under the old law two were chosen outright by the General Court, and seventeen by the General Court from lists of candidates sent up from the seventeen congressional districts by the people. The new law provided that in future the whole nineteen should be placed on one ticket to be used all over the State.‡ The purpose of the bill was apparent. The roll of each branch of the Legislature showed that the Republicans had never before been so numerous in Massachusetts. Should the old system be continued, it seemed certain that many districts would send up the names of Republican electors, and that the electoral vote of Massachusetts for President would, for the first time in her history, be divided. To prevent this, the bill was framed; for, as the majority of the freemen were believed to be Federalists, and as each elector was to be voted for in every town, it would be possible to choose Federal-

* George Clinton, 67; Brackenridge, 20; Levi Lincoln, 9; Langdon, 7; Gideon Granger, 4; Maclay, 1.

† American Mercury, March 15, 1804.

‡ "The inhabitants of the towns and plantations, qualified to vote for representatives, are to meet in town-meeting on Monday, the fifth of November, and give in their votes for nineteen electors of President and Vice President, whose names shall be in one ticket, and such ticket shall contain the name of at least one inhabitant of each district which sends a representative to Congress under the law of March 10, 1802."

ists in Republican districts by the aid of Federalist majorities elsewhere.

The Republicans were greatly excited. Every argument, every means in their power was used to defeat it. But the bill passed. In the House the vote stood one hundred and twenty-five yeas to one hundred and six nays. Of the minority, one hundred and one instantly protested.* In their protest they described the act as repugnant to the Constitution and usages of Massachusetts; as opening the way to intrigue; as tending directly to defeat Jefferson; asserted that it would prevent freemen from knowing the character of the electors, and would break down the republican principle that the majority should rule. For, as each congressional district was to be represented by a man resident within it, anybody could see that, unless the majority of the voters of the district were of the same party as the majority of the voters in the State, the district would be represented by a man from the minority. Sound as were the arguments, the protest was made in vain; even the privilege of spreading it on the journal was denied by the Federalists. Equally vain was the law; and, when election day came round, the Republicans swept all before them, chose the Governor by nearly four thousand majority, and secured the nineteen electors.

While the Federalists were resorting to such means to secure Massachusetts, the Republicans were making efforts more desperate still to secure Connecticut. There the campaign was opened by a call from the Republican leaders for a festival to be held at New Haven in honor of the election of Jefferson in 1801, and the peaceful acquisition of Louisiana in 1803. An address reminded the people that he had ended the aristocratic influence of the advocates of a funding system and a British treaty; that he had abolished a standing army, a costly navy, an odious excise; that he had reformed the judiciary and had acquired, without bloodshed, a territory so vast that its heart was said to be further from Washington than Washington was from Europe; and urged all true Republicans to express in a public manner the joy they must feel

* Columbian Centinel, June 30, 1804.

at such a triumph of democratic principles. With the address went out a circular. What the address did for national affairs, that did the circular for State affairs. It reminded the people of the political power and abuse of power of the Federalists in Connecticut. It charged them with having full control of the admission of freemen; with hindering thousands of young men from voting because they were too poor; with intimidating others by false statements; with making taxation unequal; with tolerating no religion save one; and with depriving Republicans of rights to which they were lawfully entitled.

No festival was held at New Haven. Hartford was chosen instead, and there a great gathering of Republicans took place on the eleventh of May. Abraham Bishop was the orator, and delivered an oration which filled the Federalists with consternation. Connecticut, said he, has no Constitution. On the day independence was declared, the old charter of Charles II became null and void. It was derived from royal authority and went down with royal authority. Then the people ought to have met in convention and framed a Constitution. But the General Assembly interposed, usurped the rights of the people, and enacted that the government provided for in the charter should be the civil constitution of the State. Thus all the abuses inflicted on us when subjects of a crown were fastened on us anew when we became citizens of a free republic. We still live under the old jumble of legislative, executive, and judicial powers, called a Charter. We still suffer from the old restrictions on the right to vote; we are still ruled by the whims of seven men. Twelve men make the council. Seven form a majority, and in the hands of these seven are all powers, legislative, executive, and judicial. Without their leave no law can pass; no law can be repealed. On them more than half the House of Assembly is dependent for reappointments as justices, as judges, or for promotion in the militia. By their breath are, each year, brought into official life six judges of the Superior Court, twenty-eight of probate, forty of county courts, and five hundred and ten justices of the peace, and, as often as they please, all the sheriffs. Not only do they make laws, and appoint the judges to administer

the laws, but they plead before the judges of their own appointment, and as a Court of Errors interpret the laws of their own making. Is this a Constitution? Is this an instrument of government for freemen? And who may be a freeman? No one who does not have a freehold estate worth seven dollars a year, or a personal estate on the tax list of one hundred and thirty-four dollars. Is it surprising, then, that Connecticut has furnished none of the votes which elected Thomas Jefferson, no part of the wise councils which secured us Louisiana, and that, with Massachusetts, she stands one of the lonely mourners over the remains of federalism? For these evils there is but one remedy, and this remedy we demand shall be applied. We demand a Constitution which shall separate the legislative, executive, and judicial power, extend the freeman's oath to men who labor on the highways, who serve in the militia, who pay small taxes, but possess no estates.*

In June this demand came before the General Assembly in the form of a Suffrage Bill. Every free white man, of age, who paid taxes, bore a good character, and had served in the militia for one year, was to be at liberty to take the freeman's oath. The bill was lost, and the Republican leaders at once took up the charges of Bishop and began to agitate for a constitutional convention. One Legislature, in 1776, having enacted that the Royal Charter should be the instrument of Civil Government for Connecticut, another Legislature could, they held, in 1804, enact that the Royal Charter should not be the instrument of Government. What one Legislature could do another could undo. Some people might call it a Constitution, but it was a law, and, like all laws, was subject to repeal. Constitutions were not made by assemblies, but by the people. So much in earnest were they that a few formed a committee, made the District Attorney chairman, and sent a circular letter to a prominent Republican in each town, urging him to have the people choose delegates, or, if this could not be, come himself to a convention to be held at New Haven on the last

* See on these matters "An Oration in Honor of the Election of President Jefferson, and the Peaceful Acquisition of Louisiana." Delivered May 11, 1804, at Hartford, by Abraham Bishop.

Wednesday in August.* There were in Connecticut one hundred and thirteen towns. Men from ninety-seven attended. The doors were shut, all proceedings were in secret, a day was spent in deliberation, and a new address made to the people. After due consideration the delegates were, the address stated, convinced that Connecticut had no Constitution. The sovereignty which, by the Declaration of Independence, was taken from England, had gone back, not to Congress, nor to the Legislature, but to the people. Congress, in 1776, had no authority to advise the Legislature to take up civil government. The Legislature had no authority to continue the old charter. The people were alone competent to do this. They had not done so, and there was, therefore, no Constitution for the State. It was time to make one, and the principles to be observed in making it were: No taxation without representation; free exercise of all religions; separation of the legislative, executive, and judicial powers; independent judges, universal suffrage, and the district system of choosing assistants and representatives in Congress.†

By the Federalists the address was read with more excitement than the oration of Bishop or the call for the New Haven Conference. Every one of their newspapers in the State instantly fell upon and abused it. Under such titles as Foul Play; The Democratic Looking-Glass; Count the Cost; New Constitutions made: Old Ones Repaired, Tinkered, and Mended, the people were warned to beware of the horrors of universal suffrage. Never yet, they were assured, had an extension of the franchise failed to bring with it those triple horrors, Catholics, Irishmen, and Democratic rule. Give to every man a vote, and the ports of Connecticut would be crowded with ships swarming with patriots and rapparees fresh from the bogs of Erin, elections would be decided by the refuse of jails and gibbets, and factious men from Ireland would, under the lead of Duane, inflict on Connecticut just such a government as they had already inflicted on Delaware, on Pennsylvania, on New York. Language of the same kind came Sunday after Sunday from the pulpits, and the honest

* Connecticut Courant, August 22, 1804. † Ibid., September 12, 1804.

farmers, persuaded that the Commonwealth was seriously threatened, stood firm, preserved their reputation for steady habits, and in September voted for seven of the eighteen candidates selected by the caucus of Federalists the previous October. Of the five New England States, Connecticut alone was saved to Federalism. A few weeks later the Legislature descended to the meanness of revoking the commission of the man who presided over the New Haven Conference.

The election system thus boldly attacked was indeed most cumbersome. Each year, in the month of September, a great State caucus of voters was held. Every freeman then attended town-meeting and voted for any twenty men he pleased as candidates for the council or upper branch of the Legislature. The town officers sent to the Assembly a statement of all the votes cast, and the Assembly, when the returns were all in, announced the twenty names which stood highest on the vote of the whole State. In theory the freeman was independent. He voted for any twenty men he pleased. But the day had long passed since he became a party man and voted for the twenty selected not by himself, but by a caucus of managers held at the State House. These men were the candidates, and in the following April the freemen again met and cast their votes for twelve of them. Having voted for councillors, the freemen went on to vote for a Governor, a Lieutenant-Governor, a Secretary, and a Treasurer. Again a return was made to the Assembly. Again the Assembly met, and in May counted the returns.

This count, long known as the general election, was a solemn and serious duty. On the day before the Governor was met on the outskirts of Hartford, where the May session was always held, by a company of horse-guards and escorted with great ceremony to his lodgings in the town. Early the next morning the Assembly chose a speaker, and, with the Governor, the council, the clergy, the horse-guards and the foot-guards, and the sheriff of each county with his white stave in his hand, walked in procession to the first church. There some minister, renowned over the whole State, preached the election sermon on a text suitable to the politics of the time.

The sermon ended, the procession went back with equal solemnity to the State House, where a committee of the Assembly counted the votes. The announcement of the names of the men chosen ended the election. At night a grand ball closed the ceremonies of the day. To these annual elections was added every second year the choice of representatives. In April of the even years the freemen, in their town-meeting, voted for eighteen names. In May the Assembly counted the vote, and published a list of eighteen candidates to stand in nomination. In September each freeman voted for seven of the eighteen, and in October the seven elected were announced. Presidential electors were chosen by the Legislature.

As to what was the best manner of choosing electors, the States were almost equally divided. Seven used a general ticket; * in seven others the Legislature made the choice.† In three the district system was in use, and the people voted for the electors. ‡

Excitement over the election of a President was naturally limited to such States as allowed a choice of electors by the people; but, in 1804, most of these were so overwhelmingly Republican that to rouse opposition was impossible. Of them all, Massachusetts alone was doubtful; and there alone was the struggle sharp and exciting. Republicans placed their hopes of success on the justness of their cause, and on an able defence of the Administration which had appeared in Duane's Aurora. The Federalists controlled the clergy and the press, and summoned to their aid every charge which for four years past had been going the rounds of the newspapers. The old cries of French influence, ruin of the army, ruin of the navy, ruin of the judiciary, persecution of the Federalists, Virginia rule, taxation of New England, were heard again. God-fearing men were reminded of Jefferson's friendship for Thomas Paine. The shipwrights, the blacksmiths, the whitesmiths, the pump-makers and block-makers, the pewterers, the coopers,

* New Hampshire, Rhode Island, Massachusetts, New Jersey, Pennsylvania, Virginia, Ohio.

† Vermont, Connecticut, New York, Delaware, Tennessee, South Carolina, Georgia.

‡ Maryland, Kentucky, North Carolina.

and riggers, were reminded of his hatred of mechanics and of his wish that our workshops might remain in Europe. Taxpayers were bidden to recall the frightful extravagance of the Administration: the thirty-two thousand dollars spent on the French corvette Le Berceau; the sale, for two hundred and seventy-five thousand dollars, of fifteen ships, which cost a million; the great sums squandered in sending Republicans abroad to replace Federalists at foreign courts; and the fifteen millions to be paid for Louisiana. Do you know, it was asked, what this means? Do you know that if the fifteen millions were divided among the States, on the ratio of representation, the amount allotted to each Congressman would be one hundred and five thousand; that Massachusetts would pay more than four dollars a head for each man, woman, and child within her borders; that New Hampshire's share of the interest would be eighty-seven dollars a day; and that Connecticut would be taxed thirty dollars for every family? Thus have the professed idolizers of economy embarrassed the country with a debt of which the interest is greater than the direct tax of which they complained so bitterly. Is this a subject for a thanksgiving, or for a fast?

While some spoke and wrote in this serious manner, others made use of ridicule, and found fair subjects in the salt mountain, the gun-boats, and the feeble attempts to restore the navy. Loath as the Republicans were to increase it, they were compelled, by the state of our foreign relations, to do so in 1803. Light-draught vessels must be had to blockade the harbor of Tripoli, and ninety-six thousand dollars were voted to build four, of sixteen guns each. The near prospect of war with Spain over the right to navigate the Mississippi made the defence of that river necessary, and fifty thousand dollars were set aside to build fifteen gun-boats. By the summer of 1804 Number One and Number Two were finished and afloat. They were low, narrow craft, clipper-rigged, built for speed, carried a cloud of canvas, and had a solitary gun in the stern. Number One was at once sent south, and in the harbor of Savannah encountered one of the most terrible cyclones that have ever visited our coast. The storm first appeared at the Bahamas on September fifth, and two days later struck Charleston and

Savannah, and passed up the seaboard to Maine. Spires of churches, roofs of houses, trees, buildings, went down before it. Stage-coaches were overturned, ships were beaten to pieces, docks and warehouses destroyed, and half the rice-crop, and what little the caterpillar had left of the cotton, was ruined. Such was its violence that Fort Green, off Savannah, was all but blown away. A cannon weighing two tons was moved forty feet; a bar of lead, weighing three hundred pounds, a hundred feet; and the whole of Cockspur Island covered with muskets. The water was banked up till it was ten feet deeper at low tide than it had ever been at high tide. When the floods went down, Gun-boat Number One was left high and dry in a corn-field eight miles from her moorings.* From the day of her launch she had been the subject of Federal wit, but she was now held up to the scorn of every New England sailor as a specimen of the imbecility of the Virginia President. At last, said one, a use has been found for her; she has become a scarecrow in a Georgia corn-field.† Let her rest there, said another, and she will grow into a ship-of-the-line by the time we go to war with Spain. Should this new experiment in agriculture succeed, we may expect to see the rice-swamps of Carolina and the tobacco-fields of Virginia turned by our philosophical Government into dry-docks and gun-boat gardens.‡ It is presumed, said a third, that the commander of Number Two, which now lies opposite Alexandria, is cautioned in his orders to beware of corn-fields.# Frightful as these craft are, two, more terrible still, are building at New York. In place of a waspish sting in their tails, they are to act offensively at both ends at once; and the motto of the arms of the United States, "Utrumque paratus," which means prepared at each end, is to be painted on their sterns.‖ At Boston a great dinner was given to Rufus King, and in

* Charleston Courier, September 10, 1804; City Gazette, September 10, 1804; Georgia Republican, September 14, 1804; Boston Gazette, October 11, 15, 1804; Connecticut Courant, October 10–17, 1804.

† The Repertory, October 12, 1804.

‡ Connecticut Courant, October 17, 1804.

Washington Federalist; Connecticut Courant, November 7, 1804.

‖ New York Herald, October 10, 1804; New England Palladium, October 17, 1804.

the list of toasts were: "Gun-boat Number One: If our gun-boats are of no use upon the water, may they at least be the best upon earth." "Our Farmers on the Sea-coast: May their corn-fields be defended against Gun-boat Number Three."* As election-day drew near, the excitement became intense, and, carried away by their excitement, the Republicans resorted to fraud. Voting, the law required, must be done with written ballots; but the Republicans prepared a quantity of printed ballots, containing the names of Federal electors, which they intended the unwary freemen should use on election-day.† Happily, the fraud was discovered, all Federalists warned not to use a printed ticket, and every young man who had an hour to spare was called on to spend it in writing out Federal ballots for distribution.‡ To keep the Federalists steady was impossible. Everywhere they deserted the party by thousands, and carried State after State for Jefferson. The most sanguine Republicans had never pretended to deny the Federalists at least forty electoral votes. The seven of New Hampshire, the nine of Connecticut, the nineteen of Massachusetts, the three of Delaware, and three from Maryland, they felt sure were Federal. To their amazement and delight, the Federalists secured but fourteen. The defeat was, indeed, most crushing. In 1800 they held every electoral vote cast in New England, New Jersey, and Delaware, and half the votes of Pennsylvania, Maryland, and North Carolina. In 1804 New Hampshire was gone, and Vermont, and Massachusetts, and Rhode Island, and New Jersey, and Pennsylvania, and North Carolina. Even in Maryland three votes were lost. From ten States they had fallen to three. The vindication of the administration of Jefferson was complete, nor can it be denied that the approval of the people was well deserved.

The President was greatly delighted. The two parties which had once contended with such violence, he wrote a friend, have almost wholly melted into one.# But the cause of this melting he strangely misunderstood. The Federalists

* Spectator, October 27, 1804.

† Columbian Centinel, October 13, 1804.

‡ The Repertory, October 12, 1804.

Jefferson to Volney, February 8, 1805.

he believed had come over to the Republicans. But the truth was, the Republicans had made great strides toward Federalism. They had come into power pledged to preserve State-rights, to lessen executive influence, to construe the Constitution strictly in accordance with the principles laid down in the Virginia and Kentucky resolutions of 1798 and 1799. Did they do so? The most bigoted Federalist could not say they did. After the lapse of four years the Government was as Federal in principle as it had been in the days of the Black Cockade and the "Addressers." Never was the Constitution more broadly construed than when the Judiciary Act was repealed and the purchase of Louisiana effected. Never was the Executive power more extended than when Jefferson was given despotic sway over the Territory of Orleans. Never was the Constitution more impudently disregarded than on the day when one rate of tonnage duty was laid in the ports of Louisiana and a very different one in the ports of the States. The great mass of the men who, in 1800, voted for Adams, could in 1804 see no reason whatever for voting against Jefferson. Scarcely a Federal institution was missed. Not a Federal principle had been condemned. They saw the debt, the bank, the navy still preserved; they saw a broad construction of the Constitution, a strong government exercising the inherent powers of sovereignty, paying small regard to the rights of States, and growing more and more national day by day, and they gave it a hearty support, as a government administered on the principles for which, ever since the Constitution was in force, they had contended. The fusion of the two parties which so justly delighted Jefferson was due, therefore, not merely to the republicanizing of the Federalists, but to the federalizing of the Republicans.

He was now at the height of his greatness and his power, and may well be pardoned the pride with which on the fourth of March he reviewed his administration to the crowd that gathered in the Senate wing of the Capitol. He told them how he had cultivated the friendship of foreign nations; how he had suppressed unnecessary offices, useless establishments, extravagant expenses; and swept away an odious system of internal taxes. What farmer, he asked, what laborer, what me-

chanic now sees a tax-gatherer of the United States? Though collected solely on the frontier and the seaboard, the revenue was enough and more than enough. It enabled us to pay the expenses of the Government, to fulfil our contracts with foreign nations, extinguish the Indian right to the soil, buy Louisiana, and cut down the national debt so rapidly that the day of its extinguishment was near. Once paid, the surplus revenue might, if the Constitution were amended, be divided among the States, to be used for roads, for canals, for arts, manufactures, and education. The prospect was indeed a fair one. Well might he be proud. Never before had the people been so prosperous and so happy. But his dreams were soon to be followed by a terrible awakening. His past was bright, but before him were four years crowded with such shame, with such humiliations, with such disasters as no other President has been called on to bear.

CHAPTER XVIII.

FREE TRADE AND SAILORS' RIGHTS.

DESPITE the jeers and scoffs of New England fishermen, the gun-boat building went rapidly on, and shortly after the inauguration twelve of the fifteen were finished. Had Jefferson been able to carry out his wishes, they would have been assigned to stations along the coast, pulled up out of the water and protected from the rain and sun by sheds. But this was not to be. The Barbary war was believed to be still dragging on; the need of light craft to blockade Tripoli was thought to be imperative, and nine were soon on their way to Africa. Bold was the venture, for so small were they that, when rigged, armed, manned, provisioned, and ready for sea, their gunwales were not two feet from the water. But men who knew, felt sure that by putting below the two guns each carried, and sailing at that time of year when the ocean was the smoothest and the storms least violent, the voyage could be made with safety. Nor were they mistaken, for all save one reached their haven at Syracuse. Number Seven went down with all on board. To number Six befell two adventures. Off the Western Islands a British frigate, seeing the cloud of canvas and no hull, mistook her for a raft carrying wrecked mariners, and bore down to give aid. Off Cadiz three of her crew were impressed.

The mission on which these boats were bound richly deserves a passing notice. It will be remembered that in the Spring of 1801, Jussuf Caramalli, Pasha of Tripoli, hewed down the flag-staff at the American Consulate, and by that act declared war.* It will be remembered how Commodore Dale

* History of the People of the United States, vol. ii, p. 592.

was sent with a little squadron to display the American flag in the Mediterranean;* how one of his ships captured and dismantled a Tripolitan polacre;† how, in obedience to orders, he sailed for the United States in December, 1801; and how Jefferson in his message explained all this, and told Congress that he could do no more, as it was not in the power of the President to bid a naval officer make war.‡ No such scruples were felt by Congress. That body looked on the Barbary Powers as no better than a horde of pirates, to declare war against whom would be a useless formality. But the President must be humored, and, to remove his scruples, an act was passed for the protection of the commerce and seamen of the United States against the Barbary Powers. It contained no declaration of war, yet it empowered him to proceed precisely as if a state of war existed. He could equip as many ships and enlist as many men as he thought necessary. He could issue letters of marque, ship crews for two years, and bid his officers subdue, seize, capture, and destroy the vessels and goods of the enemy.

A new squadron was now commissioned, Richard V. Morris put in command, and frigate after frigate sent out till seven were in the Mediterranean. But Morris was not the man for the emergency. He was zealous, he was courageous, but his ships were ill-fitted for the work to be done; and he used them with little energy and judgment. They convoyed merchantmen from Gibraltar to Leghorn and Malta, they chased a fleet of wheat-boats into old Tripoli, they destroyed a fine corsair, they blockaded two more at Gibraltar, and wasted weeks lying in harbor or undergoing repair; but they never molested Tripoli. In this way 1802 slipped by, and 1803 was fast going when letters of recall reached him.

At last the administration awoke to the fact that a serious mistake had been made. If Tripoli was to be brought to terms her port must be blockaded and her castle bombarded. But for these purposes the fleet was wholly unfit. The draught of the frigates was too great to enable them to command the

* History of the People of the United States, p. 592.
† Ibid., p. 602. ‡ Ibid., p. 601.

shore. The weight of metal they threw was too light to enable them to reduce the batteries. Authority was therefore obtained from Congress to supply the want, and in the spring of 1803 two fine brigs, named the Argus and the Siren, and two schooners, the Nautilus and the Vixen, were built and, with the Constitution and the Philadelphia, despatched to join the Enterprise in the Mediterranean. Commodore Preble commanded the squadron, and by November first every ship had reached Gibraltar. Among the earliest to arrive was the Philadelphia. Without waiting for the rest to come, she started for Tripoli, but on the way overhauled a Moorish cruiser, with a Boston brig in her company, and took them both. At first the master of the cruiser asserted that he made the capture on his own responsibility; but, when threatened with execution as a pirate, he brought out an order from the Governor of Tangiers to seize American ships wherever found. Returning to Gibraltar with his prizes, Bainbridge left them there and once more departed for Tripoli.

Soon after his departure Preble arrived, and, learning that Morocco had joined in the war, united the vessels he had come to relieve with such of his squadron as were at Gibraltar, ran across to Tangiers, brought the Emperor to terms, and forced him to exchange prisoners and renew the old treaty of 1786. From Tangiers Preble now bent his course toward Syracuse. When off the island of Sardinia he spoke an English frigate, and heard, with deep regret, that the Philadelphia had, three weeks before, been captured by the Turks. It seems that one morning in October, while cruising on his station, Bainbridge descried a large xebec in shore and standing for Tripoli. Sail was made to cut her off, but, as the Philadelphia sped along, firing and sounding at intervals, the water suddenly shoaled, and, a moment later, the frigate struck a hidden reef, shot up on it, and stood fast. That moment her fate was sealed. She was alone. No aid was near. The town was plainly in sight, not a league away, and down the harbor were coming nine Turkish gun-boats, attracted by the firing. Everything known to seamen was done to get her off. All anchors save one were cut from her bows. The guns were run aft, and finally thrown into the sea; still she did not move. In

desperation the main-mast was then cut away, the water-casks started, the water pumped out, and every article of weight hove overboard. Even then she would not move, and, unable to do more, the magazine was drowned, the pumps choked, the ship scuttled, and the flag hauled down. Then the Turks came over the side by scores, plundered, robbed, half stripped the crew and carried them, late at night, before the Pasha. With infinite pains the Philadelphia was next dragged from the reef and anchored off the castle walls. Then followed an exploit still regarded, and justly, as among the most splendid achievements in the history of our navy. Bainbridge, in a letter to Preble, suggested that the frigate be destroyed. The Commodore approved, and, on a January night, 1804, in the dark of the moon, Stephen Decatur, with a picked crew, entered the harbor, boarded and captured the frigate, and gave her to the flames.

Both at home and abroad the effect of this exploit was great. At Syracuse the victors were received with warm congratulations and salutes. Every crew caught their spirit and waited eagerly for the day when Preble would lead his whole fleet against Tripoli. At home the cheering influence of the victory was badly needed. News of the wreck of the Philadelphia was sent to Congress late in March, together with a request for more ships and more money. In the House the message went to the Committee on Ways and Means. Without a moment's delay, the chairman repaired to the Secretary of the Treasury and asked what was the greatest sum that could possibly be spared. He was answered, Not a penny above one hundred and fifty thousand dollars. But seven hundred and fifty thousand was the very least that could be got along with. As the Treasury could not spare so much, it was clear that new taxes must be levied, and these new taxes were provided for in the bill which, the next day, was reported to the House by the committee. Under the title of a bill further to protect the commerce and seamen of the United States against the Barbary Powers, it provided that after June thirtieth, 1804, all goods imported into the United States and paying an *ad valorem* duty should, in addition to that duty, pay two and a half per cent., or, if they came in vessels

not owned in the United States, twelve and a half per cent. more; that the money so collected should be called the Mediterranean Fund; that a distinct account should be kept of it; that it should be applied to no other purpose than waging war against the Barbary Powers; and should stop three months after peace was declared. Another section gave the President authority to build two ships of sixteen guns each, and borrow or hire as many gun-boats in the Mediterranean as he saw fit. Every one agreed that the money must be raised. A few objected to the manner of raising, but they were quickly silenced, left the room, and when the yeas and nays were taken not one voice answered Nay.

Thus provided with money and authority, the President ordered four more frigates to be put in commission and sent, as soon as they were ready, to Africa. For the command he chose Commodore James Barron, and instructed him to carry out, as Navy Agent, William Eaton, one of the most remarkable of that interesting class of adventurers to whom our country owes so much.

Eaton was born in the town of Woodstock, Connecticut, where his father supported a large family by farming all summer and teaching school all winter. That love of adventure which made him so famous in after-life was early displayed, and at sixteen he ran away from home, joined the Continental army, and rose in time to be sergeant. The war over and the army disbanded, he turned his thoughts toward an education, and in 1784 began to study Latin and Greek. He next grew religious, and in 1785 joined the church and entered Dartmouth College, with a view to becoming a minister. But two years passed before he could take his place in the Freshman class, and long before that time all notion of the ministry had vanished. In 1790 he graduated, an active, restless, adventure-loving youth, and began his career. First he taught school at Windsor, in Vermont; then he dabbled in politics, and was made clerk of the House of Delegates. He next obtained, through the influence of Stephen Roe Bradley, whom he had helped elect to the Senate of the United States, a commission as captain in the army, and for a while he fought Shawnees in Ohio and Seminoles in Georgia, till an unjust

court-martial cut short his army career, and the Government, in return, made him Consul to Tunis, and sent him, with tribute, to Algiers. He was still in Africa when the Barbary war opened and Commodore Dale appeared before Tripoli with his fleet. The scheme which now started to Eaton's mind was such as any man might conceive, but such as he alone would persistently attempt to carry out. Some years before, the reigning Pasha of Tripoli had usurped the throne and had driven his elder brother, Hamet, into exile. This elder brother Eaton now proposed should be restored to the throne, as a signal punishment to Jussuf. Seeking him in Tunis, Eaton found him ready to enter into the scheme, and agreed that he should attack Tripoli on land while the fleet bombarded it from the sea. Nothing seemed easier. All Tripoli, he believed, was ready for revolt. The suffering entailed by the blockade, the tyranny of the Pasha, and the appearance of the American fleet had brought the Turks to the verge of insurrection. Unhappily, opposition came from a quarter whence Eaton had expected hearty assistance. Jussuf Caramalli grew timid and began to listen to overtures from Hamet. The officers of the fleet would not hear of the scheme. To manage Hamet was not difficult, and, after thoroughly frightening him, he was sent off to Malta. To manage the captains of the frigates was impossible, and, after wasting two years and twenty thousand dollars, Eaton went back to the United States to explain his accounts and seek aid at Washington. So successful was he that Jefferson appointed him Navy Agent of the United States for the Barbary Powers, and thought seriously of sending him out with a thousand stand of arms, some artillery, and forty thousand dollars. But when word came that Hamet had gone to Derne, had gathered an Arab mob about him, and had been driven by his brother to take refuge in Upper Egypt. Jefferson changed his mind, and when Eaton sailed with Barron he had neither money, guns, nor much authority. His mission was to join Hamet, raise an army, and rescue the American prisoners at Tripoli. On reaching Malta in September, Barron learned that during the summer Preble had been all activity; had collected his ships, had borrowed eight gun-boats from the King of Naples, and had five times bom-

barded Tripoli. Never in naval warfare had there been fighting more terrible. The boarding, the hand-to-hand conflicts, the desperate personal combats between commanders armed with pike and sword, were long the glory of what was fondly called "our infant navy." For a generation engravings of Decatur struggling with the Turk, of Lieutenant Trippe thrusting his pike through the body of the Tripolitan commander, adorned the windows of the print-shops. The fifth battle took place on the third of September, and was followed on the night of the fourth by an accident as terrible as it is mysterious.

The ketch Intrepid, the same in which Decatur made his attack on the Philadelphia, had been turned into a floating mine and given in charge of Captain Somers and a picked crew. He was to take her into the harbor of Tripoli, set fire to it, and leave it to explode among the gun-boats and galleys of the enemy. About eight in the evening the Intrepid got under way, and, accompanied by the Vixen, the Argus, the Nautilus, the Siren, and two fast rowing boats to bring off the men, stood in toward the entrance of the harbor. At the entrance the other vessels left her to await the return of the crew, and, passing in, she slowly disappeared forever in the low, dense haze that covered the sea. Then followed a few minutes of breathless anxiety on the part of the watchers; a few minutes of heavy firing from the enemy's batteries; a blaze of fire streaming toward the sky; an explosion that shook the cruisers riding in the offing; the sound of shells falling on the rocks, and the Intrepid was no more. Not a man of all that gallant band escaped to tell the tale.

A week after this event Eaton reached Malta, and, as soon as Preble had transferred his command to Barron, was sent in the Argus to Egypt. In November he was at Alexandria. In December he entered Grand Cairo, where his energy, his stubbornness, his zeal swept all before him. He won over the Viceroy and persuaded him to suffer Hamet, who, with the Mamelukes, was waging war against him, to cross his lines and enter Egypt. He collected troops, camels, stores, and in March, 1805, began his journey across the Libyan Desert for Derne. With him went marines and cannoneers from the American

ships, Christians from every part of the earth, Greeks, Turks, Barbary Arabs, camel-drivers, in all some five hundred men, with one hundred and seven camels and a few asses. Such another motley horde never went forth to war. His plan was to march to Bomba, there await the arrival of the Argus, Captain Hull, with supplies, and then conquer the provinces of Bergazi and Derne. Men of another kind might easily have made the journey in fourteen days, but the army with Eaton consumed forty-five. Every obstacle known to the East beset him. His camel-drivers revolted; his Arab chiefs repeatedly refused to proceed. The Sheiks quarrelled among themselves. The Mussulmans plundered the Christians. Once a pitched battle almost took place for the possession of the provisions. When at last Bomba was reached, not a ship was to be seen. Then the Arabs grew furious, and had not the Hornet and the Argus come in with provisions, the situation would have been most serious. After resting and refreshing his men for three days, Eaton pushed on to Derne and stormed it, and for the first time in our history our flag floated over a city of the Old World. Three times the reigning Pasha attempted to pull it down and failed. But what could not be done by the arms of Jussuf Caramalli was done by the jealousy of Commodore Rogers and the hot haste of Tobias Lear.

Lear was Consul-General of the United States at Algiers, and had been commissioned to negotiate peace with Tripoli when, in the opinion of the commander of the American fleet, the time for making peace arrived. Barron felt sure the time had come, and he was right. But neither he nor Commodore Rodgers nor Lear was man enough to use it. The flag of the United States was flying over Derne, the second city in importance in the regency. Tripoli was threatened with a bombardment, compared with which the attacks of Preble would have been mere play. The Turks were suffering all the horrors of a long blockade. The past tyranny of Jussuf and the presence of Hamet had brought the people almost to the verge of revolt. Yet, when Lear appeared off Tripoli in the Essex, he accepted with eagerness a peace most shameful to the United States. Barron had then gone home sick. The com-

mand of the squadron had passed to Commodore Rodgers, who, jealous of the success of Eaton, basely refused to sustain him further. Lear, thus free to negotiate, signed a treaty which left Hamet to the vengeance of his brother, which compelled Eaton to quit Derne, which relieved the United States from the payment of tribute, but forced her to pay sixty thousand dollars for the release of Americans in the hands of the Pasha. But one more step was needed to complete this shameful deed, and that was quickly taken. The Constellation was sent to Derne; Hamet was privately informed of the treaty, false reports of further war were spread among the soldiers, ammunition was issued, rations were given out, and, in the dead of night, Eaton, Hamet, the Greeks, and the Americans were hurried on board the Constellation. But the treachery was discovered, and, as the last boat-load pushed off for the frigate, the people and the soldiers crowded the camp, the battery, and the shore, filling the air with lamentations, and loading the Americans with curses only too well deserved.

Thus ended the war with Tripoli. The treaty was signed on June third. The gun-boats reached Syracuse in a few weeks, and on August first Rodgers entered the bay of Tunis in order to bring the ruler of that city to terms. He was successful, and the gun-boats and frigates were then sent back gradually to the United States. The cost of the four years' war thus waged with the Barbary Powers had been great. Nor had the loss of life been inconsiderable. But the gain was well worth the cost. The discipline, the experience gained in real fighting, the splendid exhibitions of seamanship, the splendid exhibitions of courage in the destruction of the Philadelphia, in the midnight death of Somers, in the hand-to-hand fights upon the decks of Tripolitan gun-boats, bred that navy to which our country was soon to look for defence against the ruler of all seas. Never before had our foreign relations worn so serious an aspect. Henceforth to keep the peace with England, France, and Spain was hard. Nay, with Spain the crisis had come, and on the May day when Lear in the Essex entered the harbor of Tripoli, Monroe quit Madrid in disgust.

The inauguration over and Congress dispersed, Jefferson

set off for Monticello. He spoke in his address of his earnest endeavor to keep friends with foreign nations, and with those nations, above all, to whom our interest bound us most closely. But he had not been many days at home when letters and despatches began to arrive which showed him that in one quarter friendship was seriously threatened. First came the letter of Talleyrand to Armstrong; then the despatches of Pinckney and Monroe; and at last the news that negotiations at Madrid had abruptly ended. Alarmed and angry, he turned first to Madison and then to the Secretaries for advice what to do. Madison was for dropping the questions which had caused the rupture, taking up those which Monroe and Pinckney had not touched, and beginning another negotiation with Spain.* Jefferson was for taking up arms, forming an alliance with England, and stipulating that peace should not be made with Napoleon till West Florida and the spoliation claims had been secured to the United States.† Gallatin was for peace. To fight would cost more than Florida was worth. Monroe and Livingston ought to have settled the boundary of Louisiana when they made the convention of 1803. As they did not, the Sabine and the Perdido should be taken as the boundaries, some money spent on the militia, a million appropriated for ships of the line, and, with this as a threat, negotiations renewed at once.‡ Smith was for more gun-boats, twelve new seventy-fours, and then, if necessary, an alliance with England, and war with France and Spain.# Advice so various was worse than none. Jefferson was still unable to determine what to do when another letter from Armstrong, and the report that came from Orleans Territory, at last enabled him to make up his mind.

Armstrong urged him to seize Texas and break off all intercourse with Spain. For a while Jefferson seems to have thought seriously of doing so. Indeed, he drew a plan of action and named a day when the Secretaries should meet at

* Madison to Jefferson, August 2, 1805. Jefferson Papers, State Department.

† Jefferson to Madison, August 4 and 17, 1805. Madison Manuscripts, State Department, August 27, 1805. Jefferson's Works, vol. iv, p. 585.

‡ Gallatin to Jefferson, September 12, 1805. Gallatin's Works, vol. i, p. 241.

Robert Smith to Jefferson, September 10, 1805. Jefferson Papers.

Washington and discuss it. Congress was to be asked for power to drive the Spaniards out of Texas, for power to suspend diplomatic relations with Spain at will, and for a commission to determine the amount of claims for spoliation. But long before the Secretaries met the London packet brought over word that a new decision had been rendered at the Cockpit, that a new restriction had been laid on neutral trade, that eighteen American merchant-ships had been condemned, and that the condemnation of thirty more was daily expected. From that hour all thought of an alliance with England was given up.

The time was now come for vigorous measures promptly carried out. Not a post-rider entered Washington but his bag contained an account of some new outrage, some new insult offered at our very doors. Our seamen were impressed in sight of our light-houses. Our ports were blockaded and our ships examined within the jurisdiction of the United States. Englishmen and Frenchmen, Spaniards, pirates, picaroons, corsairs made prize of American ships in every quarter of the civilized world. Troops were gathering along our borders. Texas, which belonged to us, was withheld by force. At Paris, Armstrong was treated with gross insolence. At London, Monroe was treated with gross neglect. At New Orleans, Spanish soldiers still lingered in defiance of the terms of purchase.

A great bundle of letters from Claiborne, Governor of Mississippi Territory, and from General Wilkinson, commander of the army, set forth that the garrisons of Mobile and Baton Rouge had been strengthened; that a fort had been built in Trinity river; that a Governor-General of military ability had reached San Antonio; that a regular patrol was kept up on the Sabine; that hundreds of families were on their way from old Spain to settle in Texas; that troops were gathering at Nacogdoches and Matagorda; and that, both in Louisiana and Mississippi, horses had been stolen and American citizens insulted and abused by bands of Spanish soldiers. On the Mobile every American vessel that attempted to pass the town was brought to and forced to pay a duty of twelve per cent. on the value of the cargo even when all the goods in the hold belonged to the United States.

The effect of all these things on the President was to change his policy. When the Secretaries met again to advise with him, he no longer thought of an alliance with England. He no longer thought of overawing Napoleon. Indeed, he urged, and all agreed, that it would be well to call on France for help. Armstrong, it was decided, should assure the Emperor that one more effort would be made for a peaceful settlement, and should ask him to lay before Spain three propositions: Five millions of dollars for the two Floridas; a cession to Spain of Louisiana, from the Rio Grande to the Guadeloupe; and payment to the United States of all spoliation done under the Spanish flag. Claiborne, it was also decided, should command Casa Calvo and Morales and all the Spanish officers at New Orleans to depart. Compared with the Spanish troubles, the English troubles seemed mean. No heed was given them, and Madison was left to dispose of them in a book.

In this new determination to buy the Floridas, Jefferson was confirmed by a letter which came to hand next day. Armstrong was the writer. Late in August one of the political agents of France came to him with an unsigned paper in the handwriting of Talleyrand. The paper suggested that another note should be addressed by the United States to Spain. The language should be of no uncertain kind. Spain should be roused from her indifference. She should be reminded of the consequences sure to follow a persistence in her present course, and asked to arbitrate. Should she consent, Armstrong was to address a note to Talleyrand, inviting Napoleon to act as arbitrator. Napoleon would then decree that the United States should have the Floridas; that Spain should have ten millions of dollars; that the Colorado to its source and the northwest line heading all the waters flowing into the Mississippi should be the western boundary of Louisiana; that a strip thirty leagues each side of this should be a border-land forever; that the spoliation claims should be paid, and that Spain should have the same commercial rights in Florida she then enjoyed in Louisiana and Orleans. Armstrong would not so much as listen to the terms, and rejected them at once. But, a few days later, an audience with the Emperor was given to him, and he was told the sum should

be seven millions instead of ten. Then he agreed to send the despatch to America. When it came, the Secretaries were again assembled. Again the Spanish troubles were debated, and, when they parted, every suggestion of Napoleon had been approved save one. The President would not give more than five millions for the Floridas.

Part of this was to be offset by the spoliation claims, believed to be over three millions of dollars. The remainder must be obtained by special act of Congress. To ask outright for such a sum for such a purpose would, Jefferson thought, be most disastrous. Publicity would ruin the scheme. He did, therefore, in 1805, what he had once before done in 1802. He gathered up the papers relating to Spanish affairs, and sent them to Congress without any indication of his wishes; these he privately made known to members of the committee in charge of the message and the papers. Nay, he even went so far as to draw up the resolutions the committee were to report.

Congress had assembled on the second of December, and on the third had listened to the reading of the annual message. The President had something to say concerning the purchase of land from the Indians, the liberation of our citizens stranded and made prisoners on the coast of Tripoli, the gallant conduct of Consul Eaton, and the fine condition of the Treasury. But the burden was the depredation committed on the commerce of the United States by the armed vessels of England, France, and Spain. He told, in a few words, how our coast had been infested and our harbors watched by privateers; how our ships had been seized and carried off under pretext of legal adjudication; how the pirates, not daring to approach a court of justice, had plundered and sunk these vessels on the high sea and in obscure places; how the crews had been maltreated, abandoned in open boats, or cast on desert islands without food or clothes; how new principles had been interpolated into the law of nations; how Spain had hindered our commerce on the Mobile and obstructed the friendly settlement of the boundary of Louisiana; and how her subjects had invaded the Territories of Louisiana and Mississippi, and robbed and killed our citi-

zens. That the enormity of these depredations might be fully known, the details should, he promised, be the subject of another communication. Three days later this promise was made good, and a great batch of papers on Spanish affairs reached the House.

With it came an injunction of secrecy. The gallery was instantly cleared, the doors shut, and the message heard with eager expectation. To the surprise of all, the President marked out no plan of action, suggested no means of settlement, and made no request for gun-boats, troops, or money. Unable to understand what was wanted, the House sent the papers to a select committee, of which John Randolph was the chairman. Randolph went off at once to see Jefferson in person and have the mystery explained. To his astonishment, he then learned that two million dollars was wanted to buy the Floridas. This request he protested he would not support. In the first place, the money had not been asked for. In the second place, even if the money had been asked for, he would not have approved, for, after negotiation had failed, to offer money would disgrace the country forever.*

Though Randolph might not know the wishes of Jefferson, there were on the committee two members who did. One was Nicholson, who had in his pocket the resolutions the President desired to have reported. The other was Barnabas Bidwell, who declared he saw in the message a call for money, and moved that a grant be recommended. The motion was lost; an adjournment followed, and Nicholson carried the resolutions back to Gallatin in disgust. Even he would not support them. Two weeks went by before the committee met again. During one of these weeks Jefferson and Madison labored hard to turn Randolph from his decision. During the second week he was not at Washington; but the moment he came back Gallatin met him in the Capitol and thrust into his hands a paper headed "Provisions for the Purchase of Florida." Again he denounced the

* See Randolph's account in Letters of Decius, No. 1, Richmond Inquirer, August, 1806.

scheme. The President, he declared, should not be allowed to have two sets of principles, the one ostensible and the other real; should not be permitted to urge vigorous measures in his public message, and then bid Congress adopt tame measures in a secret message; should not pose before the country as an executive whose bold and energetic plans were thwarted by a timid Congress.

It was now quite clear that Jefferson must make his choice. He must give up all hope of buying the Floridas, or he must quarrel with Randolph. He chose the quarrel, and in a few weeks Congress and the whole country knew that a schism existed in the Republican party. The first indication of this was the secret report of the committee. They beheld, they declared, with just indignation, the hostile spirit of Spain. To a government having interests distinct from the people, such conduct was a proper cause for war. But to a government so identified with its citizens as that of the United States, and burdened with a debt which absorbed two thirds of its revenue, peace must always be preferable to war. When the debt was paid, the United States might indeed bid defiance to the world. Till that time the interests of the Union would be best served by peace. The most they could recommend, therefore, was that as many troops be raised as the President should think necessary to defend the Southern frontier, and avenge the insults and the inroads of Spain.

Jefferson meanwhile had made known his wishes to other members of the House, who, as soon as the report had gone to the Committee of the Whole, rallied his friends, and lost no time in sending after it three resolutions which were in agreement with his policy. The first called for a sum of money to meet any extraordinary expenses that might be incurred in intercourse with foreign nations. If the money was not in the Treasury it was to be borrowed. The second called for the continuance of the two and a half per cent. *ad valorem* duty which yielded what was popularly known as the Mediterranean Fund. The third declared that the House would highly approve any boundary which, while it gave ample territory to Spain on the side of Mexico, secured to the

United States the regions watered by the Mississippi and to the eastward.

Randolph's report was next disagreed to. A bill appropriating two millions to be expended in negotiations with foreign nations was then passed, and sent to the Senate with a resolution explaining that the money was to be used for the purchase of Florida. The Senate concurred, and on February thirteenth Jefferson signed the bill.* But the whole matter was kept secret till the last day of March. On that day the halls and doorways of the House of Representatives were crowded with men eager to learn what the great secret had been, for it was well known that the injunction of secrecy was to be taken off. Some had confidently predicted that the Louisiana stock would be confiscated, for the belief was general that what seemed the conduct of Spain was the conduct of France in disguise. Others were equally sure that the question being debated was whether there should or should not be war. When, therefore, the doors were thrown open and a few members hurried out and announced that two millions had been voted to buy the Floridas, an expression, we are told, of disappointment and disgust passed over the faces of all present.

From that hour every Federalist felt sure that Jefferson was truckling to France. In this they were wrong. Yet it cannot be denied that much was done to justify the belief when a few weeks before he approved the bill that stopped all trade with San Domingo.

The mention of that name calls up the recollection of one of the finest colonies, of one of the noblest struggles for liberty, of one of the grandest men and one of the foulest deeds in the history of revolutionary France. In the days of the Bourbon kings the Crown possessed no finer dependency than San Domingo. Her wealth was great; her trade was enormous. Seven hundred ships and seventy thousand seamen were often employed in carrying her cotton, her sugar, her coffee, and her indigo to France. More than once the value of her imports and exports rose to one hundred and forty millions

* Annals of Congress, 1805–1806, pp. 1226, 1227.

of dollars. Her population was near six hundred thousand souls. Four hundred thousand of them were negroes in abject slavery. Forty thousand more were mulattoes who owned plantations and negroes, ships and goods, but had no share in the government of the colony. The rest were creoles who enjoyed all the political rights the Crown was pleased to allow. Between those two castes, the ruling whites and the rich mulattoes, a bitter feud had always existed, and, when the Revolution opened, both appealed to France for aid. The creoles sought relief from what they considered the tyranny of colonial government. The mulattoes asked an equal share in colonial government, and offered as the price of civil rights one fifth part of all their worldly goods, real and personal. The National Assembly gladly accepted the offer. The creoles at once turned Royalists. Both parties flew to arms and a civil war began. But it was of short duration. The negroes caught the revolutionary spirit, and on an August night in 1791 perpetrated a fearful massacre. Thousands on thousands perished. Thousands more fled to the United States, and the blacks were left in complete control. Then came a period of anarchy. In the midst of anarchy the Spaniards and the English stepped in to attempt the restoration of order and the conquest of the island. They failed. The National Assembly abolished slavery, and the negroes, free and led on by Toussaint L'Ouverture, drove out the Spaniards. L'Ouverture now became in fact, though not in name, an absolute ruler. San Domingo was still a colony of France. A French agent still kept watch at Cap Français; but, save Rigaud, the mulatto general, who commanded at Jacmel, L'Ouverture stood in awe of no one. When, therefore, the United States, in 1798, suspended commercial intercourse with France and her colonies, when L'Ouverture found his people deprived of a flourishing trade and of supplies of food, he threw off even the semblance of allegiance to France and became an independent ruler. His first step was to assure the United States that if trade was renewed he would protect it. Adams accepted the assurance; Congress passed the act renewing trade, and early in April, 1799, a consul-general with diplomatic powers was at Cap Français. Hardly was he there when an

English agent with greater powers reached the island. In another month these two had made a secret treaty with L'Ouverture. To that treaty the American Consul did not appear as a party. But under it trade was at once renewed, food and clothing hurried in, and Toussaint was encouraged to go on. He began by attacking Rigaud, shut him up in Jacmel, and while he besieged the place by land the fleet of the United States blockaded the place by sea. Rigaud was starved out. Jacmel fell, and L'Ouverture promptly seized the French agent, Roume. He was now indeed absolute ruler of San Domingo. But he was not so long. The treaty of 1800 ended the quasi-war between the United States and France. The treaty of Amiens ended the actual war between Great Britain and France, and L'Ouverture was left to his fate. Late in January, 1802, a French and Spanish fleet and ten thousand men appeared off the island. A race war began, and five months later L'Ouverture was a prisoner on his way to Brest, and slavery again existed in the island.*

The peace of Amiens was speedily broken. In 1803 England was a second time at war with France. Once more an English fleet was sent to San Domingo. Once more the French surrendered. Once more the negroes rose, declared themselves free, made of Hayti a negro empire, and opened their ports to neutrals. Scores of American merchants made haste to enjoy this privilege, and great fleets of merchantmen were soon passing back and forth between the island and New York. As the sea about the Antilles then swarmed with the privateers of France and Spain, and with pirates holding no commission whatever, the merchantmen went well manned, well armed, and in company. The greatest of these fleets set sail in the winter of 1805. The armament numbered eighty cannon. The crews numbered seven hundred men. In the cargoes were vast stores of goods clearly contraband of war, for no nation had yet formally recognized Dessalines as Emperor. Indeed, though not a French ship was to be seen in one of its ports nor a French soldier in one of its towns,

* A curious account of Toussaint is given in Buonaparte in the West Indies, or the History of Toussaint L'Ouverture, the African Hero. London, 1803.

Napoleon denounced Dessalines as a rebel and claimed San Domingo as his own.

Louis Marie Turreau, a general of the Republic, was then Minister of France to the United States. He reached our country in November, 1804, and one of his earliest acts was to protest against the trade with San Domingo. Madison promised that it should be stopped. Indeed, the President had already referred to it in the annual message, and the very day Turreau landed in America a bill to restrain it was reported in the House. The title was, An Act to regulate the Clearance of Armed Merchant Vessels. The friends of commerce protested strongly against so sweeping an act. Half the trade of the country, they declared, would be stopped by it. Let it pass, and not a merchant could trade to New Orleans, to Cuba, to Jamaica, to any of the Leeward Islands. The whole Spanish main swarmed with picaroons lying in wait for our ships. Already the losses of five Baltimore insurance companies amounted to four hundred and ninety thousand dollars. Not a day went by but new losses were added. One ship, on her way from Alexandria to Jamaica, had been seized and sent to Cuba; another, from Baltimore to St. Jago de Cuba, was, on her homeward voyage, captured and taken to Baracoa with a cargo worth forty thousand dollars. A third had been chased into the Savannah river by a picaroon. If these things took place when the trade was armed, what would happen when the trade was unarmed? The enemies of commerce did not care what happened, and passed the bill by a great majority. In the Senate an attempt to stop all trade, whether armed or unarmed, with San Domingo, an attempt instigated by Madison, at the request of Turreau, was defeated by the casting vote of Burr. As passed, the act provided that no armed merchantman should leave any port of the United States for San Domingo or Cuba or any island of the West Indies, or for ports on the continent of America between Cayenne and the south boundary of Louisiana, without giving heavy bonds to bring back the arms to the United States and not to use them save in self-defence.

When the letter of Turreau announcing the passage of the act reached Napoleon, he fell into a great rage. He called

the trade scandalous. He described the conduct of the Americans as shameful, he declared he would make prize of every ship that came into or went out of a port of San Domingo, and commanded Talleyrand to say to Armstrong that it was time for the trade to stop. But Talleyrand did more. He told Armstrong that it must stop. He bade Turreau say to Madison that it must stop, and Turreau obeyed implicitly.

Having thus received the orders of Napoleon, Congress in turn made haste to obey, and on the last day of February, 1806, Jefferson signed another San Domingo bill. This stopped all trade for one year with every port in the island over which the French flag did not fly. Never since the United States had a President and a Congress had she been so disgraced. But there was no insult which Jefferson would not brook, no degradation to which he would not descend in order to please Napoleon and secure the Floridas.

The act appropriating two millions for their purchase passed the House on January sixteenth. The next day two members bore it, with an explanatory message, to the Senate. On their return they found the doors shut and the House in secret session, for another confidential message and another bundle of papers on foreign affairs had been sent in by the President. This time the papers related to Great Britain, and contained the evidence of the charges brought against her by Jefferson in his message at the opening of the session.

The restrictions laid on the neutral commerce of the United States by Great Britain in 1806 and 1807 are so bound up with like restrictions laid by France that it is now necessary to relate with some fulness the history of the conduct of these two nations toward foreigners from the earliest times. From the beginning of colonization in America down to the French and Indian war the colonizing powers of Europe had but one rule for colonial trade. By this rule the mother country, and the mother country alone, could traffic with her colonies. Neither England, nor France, nor Holland, nor Portugal, nor Spain would suffer goods to be carried to their colonies under a foreign flag nor under their own flag on account of a foreign importer. Nor would they suffer the produce of their

colonies to be carried in foreign ships to foreign countries unless the ship first touched at the parent state. In 1756, however, this rule was broken down. France, victorious on land, was ruined on the sea. Her merchant flag was well-nigh driven from the ocean. She could neither send supplies to her colonies nor bring their produce to the marts of Europe. Then, in desperation, she opened her colonial ports to neutrals under certain restrictions. Instantly the ships of Holland, Spain, and Portugal began to crowd her West Indian waters. But they were as quickly seized by British cruisers and sent to the nearest Admiralty Court. There both ship and cargo were condemned. They were enjoying in time of war a trade from which they had been shut out in time of peace. The courts therefore pronounced them French by adoption, and laid down what has ever since been known as the "rule of 1756." In substance this rule is that a neutral has no right to deliver a belligerent from the pressure of his enemies' hostilities by trading with his colonies in time of war in a manner not allowed in time of peace.

When France joined us in the war for independence a new chance was given to Great Britain to apply the rule of 1756. France, however, was far from being hard pressed on the sea, the armed neutrality of the Baltic was not to be despised, and the chance went by unused. But, when the next war began, the rule was applied, and applied most rigorously. On February first, 1793, France declared war against England, and followed up the declaration by throwing open all her colonial ports to neutral commerce. England retaliated promptly, and in March made a treaty with Russia which bound the contracting parties to stop all neutral trade with France. In May, France struck back, and by a decree ordered the detention of neutral ships, the seizure of enemies' property, and the sale of neutral provisions for worthless assignats, and so began that series of commercial depredations which form the basis of the spoliation claims assumed and but now being paid by the United States. Gouverneur Morris was then our Minister at Paris, and protested so vigorously that in the space of eight weeks the decree was twice repealed and twice enforced against us. Meantime England began to execute the

Russian treaty, and in June commanded her cruisers to bring into port every neutral ship found carrying flour, corn, meal, to any port of France. Not content with this, she issued, in November, 1793, a new order in council, ruinous to the French colonial trade of neutrals. Commanders of British cruisers and privateers were now bidden to send in for condemnation neutral vessels taking provisions to a French colony, or bringing away anything a French colony produced. France then laid the embargo on the port of Bordeaux, and the year 1793 closed with one hundred and three American ships in French hands. Hundreds more were in the ports of the French Antilles, and these, as they came forth on their homeward voyage, were seized by English cruisers and hurried to the nearest vice-admiralty court for judgment. For months the maritime news of the Advertisers and the Gazettes consisted chiefly of accounts of ships condemned at Halifax, at New Providence, at Nassau, at St. Kitts. A great cry went up from ruined merchants; Congress laid the embargo of 1794; Madison moved for a discriminating tonnage duty; Dayton moved the sequestration of British debts; Clark moved for non-intercourse with England; the people fortified their ports and seaboard towns, and, in the midst of the excitement, Great Britain revoked her order and issued a new one. Naval officers and masters of privateers were now instructed to send in for judgment such neutral vessels, and such only, as were found trading directly between any port in the French West Indies and any port in Europe. With this prohibition on direct trade she stopped, and during four years the orders remained in force. But France did not stop. In 1794 she decreed that free ships did not make free goods, and that an enemy's property might be taken from the hold of a neutral ship. In 1795 she modified this and laid down three rules to be observed toward American ships. They were that free ships made free goods; that paper blockades were invalid; that no articles should be deemed contraband of war unless so specified in the treaty of 1778. Such tenderness, unhappily, soon passed away, and in 1796 all neutrals were notified that they would be treated by France in just such manner as they suffered Great Britain to treat them.

One year later this treatment was clearly defined. English goods and naval stores were to be taken from American ships; our sailors were to be punished as pirates when found on English decks, and our vessels condemned when unprovided with a "rôle d'équipage," as provided for in the treaty of 1778. The decree of January, 1798, went further yet, and authorized the capture of neutrals laden even in part with British goods, and shut every port of France to any vessel which had entered, or so much as touched at, an English port. That same month a new British order in council issued. To the French West Indies were now added the colonies of Holland and Spain, and from them no neutral was any longer permitted to go directly to Holland, Spain, or France. The restriction, however, fell lightly on neutrals, and they were soon evading it in two ways. Some would load at a colonial port and, under the pretence of sailing to their own country, make a direct voyage from the colony to the parent state. This was the favorite trick of the neutrals of northern Europe, who, as they passed the coast of France or Holland, when homeward bound, would run into Amsterdam or Rotterdam or Brest. To stop this, Great Britain in 1799 declared the whole coast of Holland under blockade. Others would really go to some neutral country and thence re-export the same cargo in the same bottom to any of the forbidden ports they chose.

To the merchant traders of the United States this kind of fraud could offer no inducement. They were free to bring goods from the Dutch and Spanish colonies to the United States. They were equally free to re-export the same goods to Holland or Spain. Their own coast lay so near to the route from Europe to the Indies that to turn aside, run into some American port, and thence re-export their freight, was a small matter, especially when such a visit would break the forbidden direct voyage and make the trade safe. The only question to be settled was, In what did a re-exportation consist? Must the cargo be unloaded, or might it stay in the hold of the ship? Must a new insurance be effected, or might the double voyage be covered with insurance at the start? Must the duty be actually paid, or would the usual bond to re-export be sufficient? In a word, must the owner act just

as he would if the cargo had really been intended for use in the United States, and re-exportation were an after-thought made necessary by the unlooked-for state of the market?

While these questions were still being debated in the United States, they were settled in England by two famous decisions of the Lords Commissioners sitting at the Cockpit in 1800. The first was the case of the Polly, tried before the High Court of Admiralty in February. The Polly was an American-owned ship, searched and seized while on her way from Marblehead to Bilboa. The claim of her captor was, that her cargo consisted of boxes of Havana sugar and hogsheads of Caracas cocoa; that the sugar and the cocoa were the products of Spanish colonies; that the Polly was carrying the cargo to a port in Spain; and that she was therefore engaged in direct trade between Spain and Spanish colonies, and was a fit subject for capture. The owners admitted that the Polly brought the cargo from Havana in June. But they proved that the goods had been entered at the Custom-House at Marblehead, that the duty had been paid, that the boxes and the hogsheads had been landed on the wharf, and the ship put upon the stocks for repair; that a new insurance had been effected; that a new clearance had been obtained and a new voyage begun in August. The Court held this to be an honest importation and restored the ship and cargo to the neutral claimants.

The second case was that of a vessel named the Mercury. She had gone to Havana for a cargo of sugar and was on her way home when she was stopped and searched by a British privateer; but her papers showing that the port of Charleston was her destination, she was quietly suffered to go on. At Charleston she remained just long enough to get a clearance for Hamburg, and, without displacing a man of the crew or a box of sugar from the hold, set off. But she had not gone very far from land when she was again brought to by the same privateer that stopped and searched her some days before. The name of the ship, the face of the captain, the crew and the cargo were quickly recognized, and, in spite of protestations and papers, the Mercury was sent to the nearest prize court for condemnation. The matter came up

on appeal before the Lords Commissioners, and by them the property was condemned. Touching at Charleston was, they held, for the purpose of pretending to begin a new voyage. The freight had not been disturbed, the duty had not been paid, no real importation had been made, and the voyage was therefore direct and illegal.

To those two cases must be added a third, tried in the Vice-Admiralty Court at Nassau in 1801. An American ship laden with articles grown in old Spain was seized on her way from a port of the United States to a port in the Spanish colonies, was brought to Nassau, and there the Vice-Admiralty Court condemned the cargo. The decision was so opposed to the ruling of the High Court of Admiralty at London that the American Minister protested. The protest was heeded, the matter was referred to the Advocate-General, and from him came a long report on the subject. He declared that the sentence of the Court at Nassau was wrong; that it was well known, and had often been decided by the High Court of Appeals, that landing the goods and paying the duties in a neutral country broke the continuity of the voyage, and was such an importation as legalized the trade, though the goods were reshipped in the same vessel on account of the same neutral owners and sold in the mother country.

Thus, in the course of a year and a half, the highest maritime court and the ablest maritime lawyer defined precisely not merely what was, but also what was not, direct trade between an enemy and her colonies. Nor was this all, for the definition was, at the express command of the King, sent to each vice-admiralty judge for future guidance and direction. Hardly had it been received, however, when the treaty of Amiens put an end to the war, and trade went back to the old channels. In 1803 France and England were once more at war, and a new set of instructions were issued to the commanders of cruisers and privateers. Direct trade between an enemy and her colonies was again forbidden. Direct trade between neutral ports and the ports of an enemy was again allowed, provided the neutral ship had not, on the outward voyage, supplied the enemy with goods contraband of war. The proviso was new and was in time most shamefully abused

by British commanders. But the damage it caused and the anger it aroused was as nothing to the ruin produced by a new interpretation of the old privilege of indirect trade. The King, the Advocate-General, the High Court of Admiralty, had each agreed in 1800 and 1801 on a definition of direct trade between an enemy and her colonies. Supposing the rulings of the Court during the last war would be followed by the Court during the present war, the merchants of the United States engaged most deeply in commerce between the belligerents and their colonies. In two years almost the whole carrying trade of Europe was in their hands. The merchant flag of every belligerent, save England, disappeared from the sea. France and Holland absolutely ceased to trade under their flags. Spain for a while continued to transport her specie and her bullion in her own ships protected by her men-of-war. But this, too, she soon gave up, and by 1806 the dollars of Mexico and the ingots of Peru were brought to her shores in American bottoms. It was under our flag that the gum trade was carried on with Senegal; that the sugar trade was carried on with Cuba; that coffee was exported from Caracas; and hides and indigo from South America. From Vera Cruz, from Carthagena, from La Plata, from the French colonies in the Antilles, from Cayenne, from Dutch Guiana, from the Isles of France and Reunion, from Batavia and Manilla, great fleets of American merchantmen sailed for the United States, there to neutralize the voyage and then go on to Europe. They filled the warehouses at Cadiz and Antwerp to overflowing. They glutted the markets of Embden and Lisbon, Hamburg and Copenhagen with the produce of the West Indies and the fabrics of the East, and, bringing back the products of the looms and forges of Germany to the New World, drove out the manufactures of Yorkshire, Manchester, and Birmingham.

But this splendid trade was already marked for destruction. That Great Britain should long treat it with indifference was impossible. To sweep the merchant marine of every enemy from the ocean, and then behold the colonies of those enemies grow daily more prosperous; to see Guadeloupe, Martinique, Cayenne, and the Isles of France and Reunion

richer and more populous in time of war than they had ever been in time of peace; to know that the distress she sought to inflict on the colonies of her enemies was turned into prosperity by the concessions she had given to neutrals, yet suffer the concessions to remain, was a piece of folly Great Britain was the least likely of all nations to commit. She determined, therefore, to destroy it, and to destroy it in two ways: by paper blockades and by admiralty decisions. In January, 1804, accordingly, Great Britain blockaded the ports of Guadeloupe and Martinique. In April her commander at Jamaica blockaded Curaçoa. In August she extended the blockade to the Straits of Dover and the English Channel. Not a neutral ship could thenceforth enter Fecamp or St. Valery-en-Caux, Dieppe, Treport, the river Somme, Etaples, Boulogne, Calais, Gravelines, Dunkirk, Nieuport, Ostend. In May, 1805, came the first great blow to neutral commerce from the Lords Commissioners of Admiralty Appeal sitting at the Cockpit.

A ship hailing from Salem and named the Essex was seized on her way to Havana. Her owners had done what hundreds of other merchants had been doing ever since the day when the case of the Polly was decided at the Cockpit in 1800. They had taken on a cargo at Barcelona, had landed it at Salem, had given bonds for the payment of the duty if the goods were not exported, had mended their ship, and, reladen with the same cargo, had cleared her out for Havana. In principle the case was the same as that of the Polly, and it was tried in the same court and before the same judge. The claimants, therefore, expected that the same judgment would be given. But, to their amazement, the judge departed from his former rulings. He looked into the intention of the claimants. He declared the cargo had never been intended for sale in the markets of the United States, that it had been exported from Spain for no other purpose than import into Cuba, that the voyage was direct in intent, and that being direct in intent was so in fact, and condemned the ship and cargo. Two months later the Enoch and the Rowena met a like fate for like offences. The cases were indeed appealed, but the Lords Commissioners of Appeal sustained the decisions and millions of dollars of neutral property were put in jeopardy.

The meaning of these decisions was not to be mistaken. Henceforth not a pound of sugar or a grain of coffee could come into the United States for any other purpose than consumption. If a merchant carrying on a regular trade with any of the belligerents of Europe wished to export West Indian goods to a non-blockaded port of that belligerent, he might do so; but he must buy the goods in the American market. He must be able to prove that the duty had been actually paid at the Custom-House. He must be acting solely for himself, and not in collusion with the merchant who brought the goods from the Indies.

It was July when the final decision in the case of the Essex was made at London, and September when news of it reached the United States. The effect was immediate. The whole commercial world was instantly thrown into the wildest confusion. Thousands of merchants found themselves without a moment's warning on the brink of ruin. Some, whose ships were hardly a day from land, sent off swift-sailing vessels to bring them back. Others less fortunate waited in daily expectation of news that their vessels had been libelled in the vice-admiralty courts at Halifax or New Providence. Still others, whose cargoes were safe in the warehouses, or lay on the wharves, were at a loss to know what to do. They might, indeed, defy the rulings of the English courts, and go on with the trade in the old way. But the risk was then their own; for on such a venture not an underwriter, not a company for insurance, could be persuaded to stake one dollar. To sell at home was certain loss; for the market was so overstocked that the price would scarcely have met the cost of purchase, transportation, and the duty. To sell to a fellow-merchant for exportation would be to give him the great profits of the foreign market and receive in return such prices as he saw fit to pay. Many, thinking that ruin at home was far more certain than ruin at sea, grew bold and shipped their goods in the old way. Most of these shipments went safely to port, but hundreds of thousands of dollars' worth were seized by English cruisers and condemned by the English courts. Fifty ships were known to have been carried into the ports of England. As many

more were believed to have been libelled in the West Indies.*

First to complain of these depredations were the insurance companies in the great towns. Their complaints were addressed to the Secretary of State, and set forth losses of two kinds: those resulting from captures made in the Spanish main by pirates sailing under the forged commissions of France and Spain, and those resulting from capture in the English Channel by English cruisers acting under the new principle laid down by the English Courts of Admiralty. The story of the Channel captures was the old story of seizure and condemnation; but the narratives of capture by the pirates were invariably narratives of outrage, cruelty, and plunder. For a time these marauders kept close to the Cuban shores; but, protected and encouraged by the Spanish authorities, they grew bold and soon lay in wait for American merchantmen off the coast of Carolina, and finally off the Charleston bar. Sallying forth from Baracoa, from Tobago, from St. Jago de Cuba, they would make all speed for the path of neutral commerce, and the moment a neutral sail appeared bear down, and, with matches burning and every gun unhoused, demand an instant surrender, which was never refused. Sometimes the ship would be plundered and burned. Sometimes she would be carried to a Spanish port and sold. The cargo was always parted among the pirates. The captain and crew were always maltreated and abused. If land were not more than two days distant, they would be driven naked into the long-boat, given a few biscuits and a bottle of rum, and left to shift for themselves. When land was far away they would be taken to the nearest island, stripped stark naked, and put on shore. Once the pirates, armed with cutlasses, clubs, and knives, drew up in two lines on the deck of their ship and made their wretched captives run the gantlet in true savage style.

All through the autumn and early winter the merchants had been discussing in the coffee-houses and on the exchanges

* Monroe to the Secretary of Foreign Affairs of Great Britain, September 25, 1805.

the grave question what to do. The general sentiment was that an appeal should be made to Government, and made at once. No sooner, therefore, had Congress met than the merchants of New York led the way with a long memorial. Every great shipping town along the coast followed, and in six weeks strong appeals came up from Newburyport, from Salem, from Boston and New Haven, from Philadelphia, from Baltimore, and from Norfolk and Petersburg in Virginia. The merchants of Charleston joined with the insurance company of South Carolina and addressed the Secretary of State. The people of Norfolk and Portsmouth, irrespective of business, trade, or occupation, met and adopted a set of resolutions which they sent direct to the House of Representatives. All dwelt on the ruinous consequences of the new principles adopted by the admiralty courts. All repelled with indignation the imputation of fraud laid by Great Britain on the colonial trade of the United States. All condemned and complained of the paper blockades, the impressments of sailors, the insolence with which the belligerents selected and adopted such maritime laws as best suited their own interests. But a few used language that had a strong martial sound. The Salem memorial declared that the men of that town loved peace, yet would not shrink from war. That, if an appeal to arms was the last resort, they would share the common danger and the common cost. The New Haven Chamber of Commerce reminded Congress that peace could be bought at too high a price. The Norfolk and Portsmouth meeting expressed a hope that our rights would be asserted and our injuries redressed, and pledged the lives and fortunes of all present in support of the honor and independence of the nation. From Petersburg came the assurance that whatever burdens it might be necessary to impose, whatever force it might be necessary to use in the prosecution of a just national redress, the citizens of that town would contribute their full quota of the one and bear their full share of the other. Each address when read was sent to the Committee of the Whole on the State of the Union, to be followed as the weeks passed on by a long series of resolutions concerning our neutral commerce.

First went so much of the annual message as related to the

shameful conduct of the belligerent powers. At the opening of the session this had been referred to the Committee of Ways and Means, of which John Randolph was chairman, with instructions to find out in what way our neutral rights had been violated, to what extent they had been violated, and what legislative action was necessary to defend them. But the committee did nothing. December passed, the new year came in, and January all but ended without so much as a report of progress. Then on the twenty-ninth of the month the House discharged the Committee of Ways and Means and sent the matter to the Committee of the Whole on the State of the Union. Next went the non-importation resolution of Andrew Gregg, providing that, in consequence of Great Britain's impressing our sailors, seizing our ships, proscribing our trade, and steadily refusing to listen to our remonstrances, a day be named after which no goods, no wares, no merchandise grown or made in England or any English colony or English dependency, should be imported into the United States. Then followed the resolution of Nicholson, designed to stop the importation of everything made of tin; of everything made of brass; of everything made chiefly of hemp or flax; of everything of which silk formed the greater part; of woollen cloth above a certain price; of woollen hosiery of every kind; of clothing ready made; of window glass and paper cards, pictures, prints, porter, ale, and beer; the resolutions of Joseph Clay, that no foreign-owned ship should carry on any trade whatever between the United States and the colonies of any European power unless that power suffered the ships of the United States to enjoy the same as well in time of war as in time of peace; the resolution of Crowninshield, that no vessel whatever should trade between the United States and the West Indies unless American bottoms were at all times free to bring to the Indies the goods, wares, and merchandise of the United States, and to carry back to the States the goods, wares, and merchandise of the West Indies; and the resolution of James Sloan, that unless England should, before a certain day, set free all impressed American sailors, discharge all American ships held contrary to the law of nations, and make good all losses sustained by

the decisions of her prize courts, trade should cease and not be renewed till all these things had been accomplished.

But, in March, when the House went into the Committee of the Whole on the State of the Union, none save that offered by Mr. Gregg and that offered by Mr. Nicholson were seriously considered. The resolution of Gregg for a total non-importation of British goods and wares expressed the sentiments of the merchants and ship-owners of the Eastern and Middle States. The resolution of Nicholson for a partial non-importation of British goods expressed the sentiments of the Secretary of the Treasury, of the greater part of the South, of the men who raised cotton and tobacco, flaxseed and rice; who found a market in London, and who depended on London alone for every article they used: for the brooms with which their floors were swept, for the cotton in which their slaves were dressed, for the furniture in their houses, for their saddles, their books, and in many cases for the coats upon their backs and the boots on their feet. The first to be debated was that of Gregg. Those who opposed it did so on the ground that it would cut down the revenue, increase taxation, inflict a deep and fatal wound on agriculture, provoke Great Britain to retaliation, and sacrifice the interests of the people of the South by taking from them the only market for their staple commodities, and by depriving them of the necessaries of life, without which they could not possibly subsist. There is, said they, now lying on the table of the House a report made by the Secretary of the Treasury. From that report it appears that we imported from Great Britain last year thirty-five million nine hundred and seventy thousand dollars' worth of goods; that the revenue derived from them was five millions and a half, while the revenue derived from our commerce with all the world besides was but a trifle over six millions of dollars. Leaving out of consideration the Mediterranean Fund, which is pledged to a special purpose, the permanent income of the United States is, in round numbers, eleven millions five hundred thousand dollars. But the permanent outgo is eleven millions; eight millions for the principal and interest of the public debt and three millions for the army, the navy, and the civil list. Adopt this resolution then, and

what happens? Not a dollar's worth of the thirty-five millions of British goods is entered at your Custom-House. Not a cent of the five and a half millions revenue is collected, and, in the course of a whole year, not enough money comes into the Treasury to pay the interest and make the required reduction in the principal of the debt. The surplus will disappear, and in its place will be a deficit of nearly six millions of dollars. This will have to be made up. And how can it be made up but by laying taxes on land, on liquor, on tobacco, on carriages, on paper and parchment—by, in short, restoring to the Statute Books that odious Federal system of internal taxation which it is the glory of the Republican party to have swept away? Is the gain worth the cost? National honor, it is true, can not be estimated in dollars and cents. In war, millions must be expended to protect thousands. But we are told this is not a war measure. This is a commercial regulation, intended to protect our seamen and our carrying trade. It ought, therefore, to be treated in a commercial spirit, and to destroy a revenue of five millions in order to protect a carrying trade which yields but eight hundred and fifty thousand is, to say the least, extremely foolish.

The folly of this non-importation scheme, they continued, is yet more signally displayed when we consider the effect it will have on our exports, our agriculture, our foreign markets. During the year just gone the domestic produce sent to Great Britain and her dependencies was valued at twenty millions. Nine millions nine hundred thousand went from States south of the Potomac; and of these nine millions, eight millions eight hundred thousand was in cotton and tobacco alone. The tobacco remains abroad, but no small part of the cotton comes back, for from England we import all the cotton goods we use, save the white and stained cloth from the East Indies. Adopt this resolution, pass a non-importation act, stop the bringing in of British goods, and what do you do? You do not indeed prevent raw cotton from going to Liverpool, but you prevent manufactured cotton from coming to Charleston, to Savannah, to New York; you break down the market and you ruin every planter on whose land the cotton grows, for nothing can be more clear than that the moment you cease to buy the fabrics

of Great Britain she must of necessity cease to buy of us the raw material out of which the fabrics are made.

Look again at the effect of non-importation on the Eastern and Middle States. From them go out each year to the British West Indies some six million dollars' worth of lumber, flour, corn-meal, and fish. For this comes back one and a half million in bills of exchange, and four and a half millions in sugar, rum, and coffee. Suppose now that the importation of British goods is stopped. Suppose that we will no longer take four and a half millions in sugar, coffee, and rum, grown and made in the islands. Can the West Indian planter pay for our flour and lumber as great a price as he now pays for them? He certainly can not, and the result, the inevitable result, will be a fall in the value of all those products grown on the farms of the Middle States and of New England. Thus will the farmer in the North and the planter in the South be loaded with two intolerable burdens. To make good the five millions of revenue thrown away there will be taxes on his land, on his cattle, on his house, on everything that is his. And at the very time his taxes are most heavy, his flour, meal, the cotton and tobacco, the pitch and resin on which he must depend for money to pay them will be shrinking in value, and perhaps become unsalable in the market.

Such are the evils we are invited to inflict deliberately, wantonly, needlessly on ourselves. But there will be other evils not of our own inflicting. Great Britain will retaliate, and retaliation will drive us into war. We are told that this is impossible; that we are the great consumers of her manufactures; and that on the first attempt to countervail our restrictions a remonstrance will come up from the manufacturers and traders of London, of Bristol, of Lancaster, of Liverpool, of Hull, of Glasgow, which even the present ministry, strong as it is, must heed. In proof of this, an appeal has been made to the history of the Revolution, and we are bidden to remember the outcry which thirty years ago was made in England by the non-importation agreement of the colonies. The case is indeed a case in point, and a most unfortunate one for those who appeal to it. The trader and manufacturer did indeed cry out most lustily, and piled the table of the Commons

high with petitions and remonstrances against the prosecution of the war. But did the King yield? Did the war stop? Nay, in spite of a weak administration, in spite of a spirited and powerful opposition, in spite of the prayers of the merchant and the detestation of the people, the war went on for seven years. Will the petitions of the spinners and weavers, the iron-founders and knife-grinders, be more effective in 1806 than they were in 1776? Then Great Britain was fighting to put down a rebellion in her colonies. To-day she is fighting for her existence as a nation. The commercial principle for which she is contending is absolutely necessary to her in the waging of her European war. The one vulnerable point of her enemy is the commerce of neutrals between that enemy and his possessions. War with us would be as nothing to a surrender of the principle she has asserted. To her the cost of such a war would not be one extra penny. Her navy is enormous. Her ships are manned, armed and on the sea, without a single enemy to oppose them. To us the cost would be terrible to think of. Our commerce would enrich her sailors and her officers. Our revenue would be cut off at the roots, our credit would be sunk, and our debt increased beyond all calculation. Reject this resolution, and we shall continue to be what Americans ought to be—happy and contented, without internal taxes and without foreign war. Accept it, and we shall soon become what Englishmen are—warlike and glorious, with plenty of honor and dignity, which are but milder terms for taxes and blood.

Your arguments, said the men who supported the resolution to those who opposed the resolution, are of two kinds: appeals to our hopes, and appeals to our fears. Appeals to our hopes that, by negotiation, we may yet persuade Great Britain to abandon that injurious conduct toward us which it is her interest to follow, and on which she has coolly, deliberately, and systematically entered. Appeals to our fears that if we adopt non-intercourse we shall hurt ourselves greatly, and Great Britain not at all. In one breath you denounce the measure as too weak to accomplish anything. In the next you describe it as so strong, so vindictive, that it must lead straight to war. To hope for better treatment at the hands

of Great Britain is idle, for the President has told us that he has negotiated, and negotiated in vain. To believe that war and commercial ruin wait upon the adoption of non-intercourse is equally idle, for Great Britain is by no means disposed to add to the number of her enemies, and our revenue and our markets will not be lost. She well knows that in the event of war, Canada and Nova Scotia, and some of her West India islands, will be taken from her. She well knows, too, that her subjects own sixteen millions of our public debt, and eight millions of Louisiana stock, and three millions of bank stock, and ten millions of private debts. Will she, then, put to hazard her provinces and her property? True it is that our revenue will be slightly cut down. We shall have nine millions instead of eleven and a half millions a year, and our public debt will be paid not in 1818, but in 1826. But, on the other hand, we will have assumed a manly and dignified spirit; we will have armed our Government with sufficient means to enforce our rights, and will command the respect of all nations.

When the debate had gone on for more than a week it was admitted on every hand that the resolution of Gregg was far too strong; that the arguments made by the opposers of the scheme were much sounder than the arguments made by the supporters, and that a total non-importation of British goods would never do. When, therefore, the House had for the eighth time gone into the Committee of the Whole, and the motion was made to take up the resolution of Gregg, it was decided by a vote of seventy to forty-seven not to do so, and, without a division, that of Nicholson was taken up instead. From that moment the result was never in doubt. Nevertheless, four days were spent in further debate before the committee reported the resolution of the House, before the House accepted the report, and before a select committee of five was chosen to frame a bill in accordance with the principles of Nicholson's resolution. The Committee of the Whole were then discharged from further consideration of the motions of Gregg and Sloane, which were promptly withdrawn by their movers.*

* The pamphlets on the commercial troubles of 1806 that are worth reading are these: War in Disguise; or, The Frauds on the Neutral Flags. London, 1805.

When the bill passed the Senate it forbade the importation, directly or indirectly, from Great Britain and her dependencies, after November fifteenth, 1806, of a long list of goods, wares, and merchandise, fixed the penalties that should be visited on breakers of the law, gave to collectors of customs power to search ships, vessels, dwelling-houses, shops, and buildings for prohibited goods, and prescribed a new form of oath to be taken by masters of vessels, importers, agents, and consigners. In the Senate but little opposition was met with till the Vice-President rose and put the question, "Shall this bill pass?" Then a senator moved to put off consideration till the first Monday in November. But, by a vote of nineteen to nine, this was refused, and by precisely the same vote the bill passed. April eighteenth the President approved, and one week later the folly of expecting any change in the behavior of Great Britain was finely illustrated.

Toward five o'clock on the evening of April twenty-fifth the coasting-sloop Richard, from Brandywine, was approaching New York. Suddenly, when scarcely two miles from the Sandy Hook light and not a quarter of a mile from the beach, two shots came screaming toward her; one struck the water forty yards from the bow; the other passed directly over her. The

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New York, 1806. War without Disguise; or, The Frauds of Neutral Commerce a Justification of Belligerent Captures; with Observations on the Answer to War in Disguise and Mr. Madison's Examination. London, 1806. "Printed in America," 1807. An Examination of the British Doctrine which subjects to Capture a Neutral Trade not open in Time of Peace. 1805. An Answer to War in Disguise; or, Remarks upon the New Doctrine of England concerning Neutral Trade. New York, February, 1806. An Inquiry into the Present State of the Foreign Relations of the Union as affected by the Late Measures of Administration. Philadelphia, 1806. The Speech of the Hon. J. Randolph, Representative from the State of Virginia in the General Congress of America, on a Motion for the Non-importation of British Merchandise pending the Present Dispute between Great Britain and America. With an Introduction by the Author of War in Disguise. New York and London, 1806. Thoughts on the Subject of Naval Power in the United States of America, and on Certain Means of Encouraging and Protecting their Commerce and Manufactures. Philadelphia, 1806. Oil without Vinegar and Dignity without Pride; or, British, American, and West Indian Interests considered. By Macall Medford, Esq. London, 1807. Memorial of the Merchant Traders of the City of Baltimore on the Violation of our Neutral Rights. 1806. The Memorial of the Merchants and Traders of the City of Philadelphia. Philadelphia, 1806.

Richard was quickly rounded; but just at that moment a third ball, badly aimed, struck the taffrail and quarter-rail, and carried off the head of John Pierce, the helmsman. The shots came from the Leander, a British war ship, that had long lain in the offing, stopping coasters, searching merchantmen, seizing ships, and impressing citizens of the United States. On some of his captures the captain of the Leander put prize crews and sent them to Halifax. But the Richard made her escape and, toward morning, reached New York.

As the news spread through the city the whole population was thrown into commotion. The body of the murdered man was taken from the ship and exposed to view in Burling Slip, at the Tontine Coffee-House, and then laid in state in the City Hall. Thousands viewed it, and of these, scarce one but went away cursing England and the administration, and vowing vengeance which was no idle threat. Some set off instantly in a pilot boat to bring back the sloop Aurora and the schooner Nimrod, lately seized by the Leander and sent to Halifax. Others went to stop the provisions destined for the man-of-war. The purser of the Leander had come up to town the day before the murder and bought a great quantity of meat and food for his ship. Two boats loaded with them were found at the wharf and seized. Three more had gone down the bay, but swift-sailing vessels put after them, overhauled them at Sandy Hook, and brought them back to town, where the food, put into ten carts, was dragged by shouting crowds to the almshouses.

Meanwhile the Common Council met, denounced the murder and the daring aggression on national right, voted a public funeral, and asked the captains of ships in the harbor to lower their flags to half-mast, and the sextons of the churches to toll the bells. The people assembled and resolved to attend the funeral in a body. The Tammany Society did likewise. The Grand Sachem impressed upon his brothers that the die was cast, that the disturbers of the peace of the world had spilled the blood of their countryman, that the national flag should therefore be hoisted to half-mast on the Great Wigwam, and that the members of Tammany should, with black bands on their hats and black crape edged with red on their arms, pay

respect to the shade of the murdered Pierce. Their tomahawks, their bows, their arrows, they might leave at home, but they should have their arrows well sharpened and their bows well strung, for the black belt of wampum stained with American blood was before their eyes in the grand council chamber of the nation. On the day of the funeral the body, surrounded by the clergy, the captains and crews of all the ships in the harbor, the Mayor, the Common Council, and the citizens, was borne along Wall Street, Pearl Street, Whitehall Street, to Broadway, and deposited in the graveyard of St. Paul's church.

The excitement called out by this incident did not stop at the grave. The spring elections were near at hand, and each party found in the murder of Pierce material for campaign purposes. The Federalists gathered some idle sailors together in Hardy's Tavern, plied them with grog, and had a set of resolutions passed which were hailed as the "sentiments of the American sailor." One resolution declared that the money spent on the wild lands of Louisiana would have been much better used in building seventy-four-gun ships. Another attributed to the cowardice of Government the insults heaped on American seamen. The last asserted that the President would be much better employed in maintaining our rights and protecting our flag than in cutting up animals and stuffing the skins of dead raccoons. In the heat of party conflict the old Federal sentiment of 1798 was reversed, and "millions for tribute, not a cent for defence," became the derisive toast of the hour. Why, the Federal writers asked, why are our lives and our property left unprotected by the Government? Not for lack of money, for the revenue is immense, and we pay an immense share of it. On the day when Mr. Jefferson came to the presidency there were delivered to his keeping an overflowing Treasury, a flourishing navy, a national honor till then maintained, and a name respected by all nations. Where now is our navy? Rotting at the wharves, or sold to buy gun-boats? Where now is our treasure? Ingloriously paid to a French despot by way of tribute. Where is our national honor? Gone. Forsaken at Tripoli. Abandoned on the Mississippi. We have petitioned Congress for protection, and our petition

has been made the subject of scoffs and jeers by the Lords of Virginia. We have petitioned the Legislature of our own State, and Mr. Clinton, in derision, brought in his resolution to arm the North river market boats. To the administration and the party of the administration, not to us, is to be attributed this national disgrace, this wanton murder of an American citizen.

To this charge the Republicans replied by declaring that the murder of Pierce, and every other act of British insolence, was the necessary consequence of the tameness and indifference of three Federal administrations; by asserting that had not our national rights been given up by Jay's treaty, had not the British been tamely suffered to seize our produce bound to France, had not John Adams basely suffered British ships to come to our shores and take away men claiming our protection, Pierce would not have died; by reminding the people how, in time past, when British war ships came to our ports, impressed our sailors, insulted our country, and violated our laws, the officers had been caressed and feasted by the Federalists. How, when the French took some ships insured in the Marine Insurance Company, of New York, the president of the company, a Federalist indeed, besought the British Consul to ask that British ships of war might be stationed off the coast; how the Consul made the request, how the Leander was sent to cruise off the Hook, and how she there impressed sailors, defied the law, and resisted the attempt of a marshal to serve a process.

Beyond the limits of New York the feeling excited by the murder of Pierce was less bitter. At Washington, on the third of May, Jefferson put forth a proclamation. He called for the arrest of Whitby. He commanded the Leander, the Cambrian, and the Driver to leave the ports of the United States. Should they fail to go, or, going, should they come back, he prohibited the people to repair them, or pilot them, or supply them with food, and forbade the officers, Henry Whitby, John Nairne, and Slingsby Simpson, ever again to enter the waters of the United States.

At Philadelphia, on the twelfth of May, the day being the anniversary of the Society of St. Tammany, the council fires were lighted and a set of resolutions framed in the Great

Wigwam, at the Green Tree Inn. The subject was the killing of Pierce, and one of them ordered that a painting representing the murder should be secured and hung up in the Wigwam, to keep in memory the fact that he fell by one of the acts of those tyrants of whose bloody spirit sad memorials were to be found in every country and in every clime. On the fourth of July the revellers in each great town and city drank at least one toast to the memory of the man they affected to consider as the latest martyr to liberty. At Charleston the ship captains passed resolutions of sympathy and denunciation. Their denunciations of the Government were richly deserved, but ought not to have been limited to the party then in control, for never, since the country had presidents, had the sailor been protected in his rights. Hardly was the Constitution a year old when England began the practice of dragging American citizens from the decks of American ships, and during sixteen years had carried it on in every portion of the civilized world with impunity. Early in 1790, Spain having seized a couple of British vessels in Nootka Sound, England made ready for a naval war, and on the night of May fourth a hot press went on along the wharves and in the sailors' beer cellars of London. Large numbers of American seamen were captured, and the captains of the ships from which the press-gang took them turned to Gouverneur Morris for help. Morris was then in London as an unaccredited agent for the United States. He had been requested by Washington to inquire into the disposition of the English ministry to make a treaty of commerce and send a minister to Philadelphia, and gladly undertook to present this new grievance of his countrymen. Interviews were held with the Duke of Leeds and with Pitt, in the course of which both disclaimed any wish on the part of England to molest American sailors, and declared that the whole trouble arose from the difficulty of distinguishing the subjects of his Majesty from the citizens of the United States. Morris then asked if certificates of citizenship issued by the admiralty courts would be a sufficient protection, and was answered that they would.* But Wash-

* Morris to Jefferson, May 27, 1790.

ington would hear nothing of certificates, and when Thomas Pinkney went out as Minister of the United States, at London, he was especially instructed on the matter. The mode suggested by Morris, he was told, was "entirely rejected." Sailors would never be able to take care of their papers, and if they did not have them, England would be armed with a legal right to impress our whole marine. He was to stand out for the simple rule that American ships made American seamen. Should it be apprehended that our vessels might thus become asylums for the subjects of Great Britain, the number of men to be protected might be limited by the tonnage. An officer or two might even be suffered to go on board to count the crew. But no press-gang should ever set foot on the deck till the master had refused to deliver the supernumeraries, and until an American consul had been summoned to witness what went on.* The instruction had hardly been given when two flagrant cases of impressment were reported at the Department of State.† More remonstrances were made, but war with France followed almost immediately, and impressment began in earnest. Every effort to stop it, to regulate it, to even check it, was of no avail. In 1793 consuls were permitted to protect from impressment native-born citizens of the United States, and began to issue certificates of citizenship.‡ But this was soon denied to be a consular power, denounced as leading to serious abuses, and the papers not respected.# In 1794 Jay made his famous treaty, but the treaty was silent on the subject of impressment, and in 1796 Congress was forced to interpose.‖ The high ground that the flag should cover the man was now abandoned, collectors of the ports were instructed to issue protections to seamen who were citizens of the United States, keep a register, and report once a quarter. The President was authorized to appoint two agents to reside abroad, and bid them inquire into the situation of impressed American sailors and report to the Secretary

* Jefferson to Pinkney, June 11, 1792.
Jefferson to Pinkney, October 12 and November 6, 1792.
Pinkney to Jefferson, March 13, 1793.
Rufus King to Pickering, November, 1796.

‖ Act of May 28, 1796.

of State. Under this act, between 1796 and 1801 thirty-five thousand nine hundred seamen were registered by the collectors, and the release of nineteen hundred and forty asked for by the agent in London. In the West Indies all manner of hindrances were put in the way of their release. The detection of an attempt to notify an American consul of the presence of Americans on board an English ship was sure to be followed by a brutal flogging. So reluctant were the officers to free them when their presence was detected that the American agent, Silas Talbot, took out writs of *habeas corpus* at Jamaica. The Vice-Admiral, Sir Hyde Parker, defeated this attempt by commanding his officers to give the writs no heed.*

Side by side with the evil of impressment, which so sorely afflicted the United States, grew up the evil of desertion, which quite as sorely afflicted Great Britain. The undisturbed right enjoyed by Americans of bringing coffee and sugar from the French West Indies to Charleston, to Boston, or to New York, there breaking the voyage and then shipping provisions to Bordeaux or to Brest, had thrown into the hands of American merchants the whole colonial trade of France. Opportunities for trade had stimulated ship-building. New ships increased the demand for sailors; the United States could not supply the demand; wages rose from eight to twenty-four dollars a month, and British sailors began to desert from every privateer and frigate that entered our ports. Once safe on our shores, an American name was assumed, an American protection purchased, and Jack, thus disguised as an American citizen, was soon on the deck of an American merchantman on his way to San Domingo or Martinique. So prevalent did this become that an offer was made by the English Minister in 1798, and renewed in 1800, for an article concerning the return of deserters to be added to the treaty of 1794.† But, as the article did not sufficiently provide against the impressment of American seamen, it was not ac-

* Pickering to King, October 3, 1797; also, Pickering to Silas Talbot, August 15, 1797.

† Robert Liston to Pickering, February 2 and 4, 1800.

cepted,* and desertion went on more defiantly than ever. At Norfolk the crew of a British vessel quit in a body and shipped for a cruise on an American sloop-of-war. At New York almost every English vessel that came into port was forced to go short-handed away. To get the men back was impossible, for neither magistrates nor people would apprehend them.

Though she might not be able to recover her deserters on land, Great Britain was amply able to do so on the sea. Asserting the principle, once a subject always a subject, she claimed the services of every British sailor wherever and whenever found. Nothing could release him. If he produced naturalization papers from the country under whose flag he sailed, he was told that England did not admit the right of expatriation. If he claimed to have voluntarily enlisted in the service of a neutral, and to be under contract for the voyage, he was told that such agreements must give way at the call of his King. Every British officer, therefore, who came over the side of an American merchantman to search for an enemy's goods, mustered the crew and searched for British subjects. At first an honest attempt seems to have been made to distinguish between the men of the two countries. But the moment desertions began to become numerous, the moment the United States began to protect and encourage deserters, that moment all attempt at discrimination ceased, and impressment grew more and more rigorous, till at last the officer who searched an American ship laughed at protections and naturalization papers, differences of language and differences of race, and took off with him such men as pleased his fancy, and cared not a rush where they were born.

In the course of the negotiations each nation lamented the stand it was forced to take, and expressed the utmost anxiety to find a remedy. It is certainly just, said the representatives of the United States, that England should be protected against the loss of her seamen by desertion—a loss most serious to a nation depending as she does on her maritime strength for her safety. But it is also just that the United States should

* Message and Documents sent by Madison to the Senate, July 6, 1812.

be protected against the loss of her seamen by impressment. The right to impress Americans, said the representatives of England, has never been asserted, and the few taken are always restored on application. British subjects, not American citizens, are the men we seek. It is true, was the answer, that the right to impress Americans has never been asserted. Yet impressment goes on. Our citizens are dragged on board of British ships with evidence of citizenship in their hands, and forced to serve till such testimonials of their birth as England will accept can be obtained from their homes in America. Meantime a free citizen, to whose services Britain has no pretext of right, is made against his will to serve her. Mere release of the injured is no amend; the thing ought not to happen. All this was readily admitted, and our Minister, Rufus King, believed an agreement to stop the evil was about to be reached when Pitt retired from office; when Mr. Addington took his place; when Lord Hawkesbury became Foreign Secretary; when peace was made with Bonaparte, and the vexed questions of impressment and desertion were left unsettled. Impressment for the time being stopped, but desertions went on, and were openly encouraged to go on. Edward Thornton, the British chargé, who succeeded Robert Liston, declared that in every port of the United States his Majesty's sailors were systematically urged to desert as a means of frightening British vessels from our shores, and preventing their coming in competition with American shipping. When he asked for the return of a man who had left a man-of-war lying off Norfolk and enlisted on a United States revenue cutter, he was told that he asked for what neither the laws of nations nor the provisions of any treaty required. So little disposed was the administration to stop this abuse that Virginia was quietly suffered to decree that whoever delivered up, or caused to be delivered up, for transportation beyond the sea, any free person, was guilty of a felony, and should, on conviction, be imprisoned ten years; and that, if the person so given up suffered death, the felon should suffer death as an aider and abettor of murder.* To ask for the arrest and sur-

* Laws of Virginia, chapter 71, January 21, 1801.

render of a British deserter in the face of this law was useless.

Thus matters stood when the peace secured at Amiens was broken, and France and England were again at war. Knowing that war was surely coming, King, in the early part of 1803, renewed negotiations and brought them almost to a successful issue. He persuaded the first Lord of the Admiralty to agree that impressment should no longer be practised on the high seas, and that neither nation should permit seafaring men to be clandestinely concealed or carried away from the territories or colonial possessions of the other. But when the agreement came to be put in the form of a convention his Lordship insisted that the narrow seas should be expressly exempted from the provision against impressment. King would not consent, and the negotiation ended in failure. War between France and England followed almost immediately. A hot press took place in the seaports and colonies of Great Britain, and scores of American citizens, natives and naturalized, were again dragged from the decks of merchant ships to the decks of ships of war.

Just at this time Rufus King ceased to be Minister Plenipotentiary from the United States, and James Monroe took his place. No easy task was assigned him, for not only were old grievances revived, but every month new ones were added. Not only were our sailors impressed and our ships searched, but our harbors were blockaded and our laws set at naught. Fleets of English frigates cruised off Chesapeake Bay and New York harbor, waiting for French privateers, and searching our merchantmen for contraband goods and British seamen. English officers violated our laws and defied the jurisdiction of our courts even when the vessels rode at anchor in our waters. Paper blockades were laid on Martinique and Guadeloupe. The old rule of 1756 was enforced; the old quarrel over contraband goods was renewed; the dispute concerning the boundary between Maine and New Brunswick had become quite serious, and on the thirty-first of October, 1803, every one of the commercial articles of the treaty of 1794 had expired. A settlement of all these matters was to be sought by Monroe. But he was to begin by offering a com-

mercial convention of which the plan was marked out by Madison. One article forbade impressment on the high seas; another prescribed the manner of making a search; a third gave a long list of articles contraband of war; a fourth defined a valid blockade; a fifth denied protection to deserters from the navy; a sixth, to deserters from the army. The convention was to be in force for eight years. Thus instructed, he appeared before Lord Hawkesbury, was patiently heard, and promised that, if he would frame a convention on such a plan, it should be promptly submitted to the Cabinet. Monroe made the draft. But the ministry changed. Addington gave place to Pitt. Lord Hawkesbury was succeeded by Lord Harrowby, and with the proposed convention the new Secretary would have nothing to do. For a while he would not read it; he would not discuss it; he would not give it a moment's thought. When at last he did, it was merely to ask for delay, and while he delayed, the quarrel of Charles Pinckney and Cevallos called Monroe to Spain. On his return to London in July, 1805, Monroe found a new complication and a new minister awaiting him. The Vice-Admiralty Court of Newfoundland had condemned the Aurora; the Court of Appeals had decided the case of the Essex; Lord Harrowby had fallen from power, and Lord Mulgrave was Secretary of Foreign Affairs.

Shortly after the renewal of war in 1803, a New York marine insurance company, so the story runs, began to suffer losses in consequence of French frigates and privateers capturing ships on which it had risks. The president of the company thereupon wrote to the British Consul and asked his influence to have an English armed ship stationed off the port to keep the Frenchmen away. Two were sent, and about the middle of June, 1804, the Cambrian, a frigate of forty-four guns, and the Driver, a sloop of eighteen, came over the bar and anchored hard by two French frigates then in port. Shortly after, a British vessel named the Pitt, from Greenock, entered the lower bay and was there brought to and searched by armed boats from the Cambrian. Twenty sailors were impressed, and when the revenue officer and the health officer attempted to go over the side of the Pitt they were driven

back by armed sailors.* For this gross outrage the captain of the Cambrian condescended to apologize. His people, he explained, were ignorant of the law. They were not aware that an English ship could ever be subject to the authority of the United States. But he would not give up the impressed sailors till the British Consul informed him that he must. The United States complained, the captain was recalled and promoted, and Congress, justly incensed, passed the act of March, 1805, for the more effectual preservation of peace in the ports and harbors of the United States. This law Monroe was to explain most carefully, for the English Minister had remonstrated against the strong language of the sixth section. At the same time he was to protest against the decision in the case of the Aurora.† While Spain was at war with Great Britain the Aurora brought a cargo of Spanish goods from Havana to Charleston, landed the produce, and paid the duty according to law. After three weeks the cargo was reshipped, the duty drawn back, save the three and a half per cent. retained on articles exported after importation, and the ship cleared for Barcelona in old Spain. On the way an English cruiser searched and sent her for trial to Newfoundland, where the cargo was condemned by the Court of Vice-Admiralty. Breaking bulk and paying duty at Charleston did not, in the opinion of the Court, break the voyage. It was continuous, and, being continuous, was direct and illegal. The decision was startling, for, should it be confirmed by the Court of Appeals, a trade valued at thirty-two millions of dollars and yielding a revenue of one hundred and eighty-four thousand annually was ended. In the cases of the Essex, the Rowena, the Enoch, and the Mars, the decision of the Newfoundland court was more than affirmed, and, when Monroe appeared before Lord Mulgrave in August, had become the settled policy of England.

Again the old troubles were gone over. Again delay followed delay, and 1805 ended with nothing done. In January, 1806, Pitt died. In February Charles James Fox was called

* Gazette of the United States, June 19, 20, 21, 1804.

† Madison to Monroe, April 12, 1805.

to power, and to him, in turn, Monroe presented the time-worn complaints and remonstrances, and once more waited patiently while the old mummery of considering them was gone through with. In April the Non-importation Act was passed, and almost immediately William Pinkney was joined with Monroe, and the two made Commissioners Extraordinary and Plenipotentiary to settle all matters of difference between the United States and Great Britain.

Their instructions were full and explicit. They were to explain the Non-importation Act just passed. They were to insist that impressment be given up, as the condition on which the act would be repealed. They were to abandon the principle "free ships make free goods" if they could secure the neutral right to colonial trade. They were to insist that contraband goods taken by a ship on an outward voyage did not taint the goods in the ship on its return voyage. On no account were they to yield to the rule of 1756, or to the order in council concerning broken voyages, or to the claim that notice of blockade served on a neutral minister might take the place of warning to a neutral ship by a blockading vessel. Captures and searches were not to be made west of the Gulf Stream, or at least not within four leagues of shore.

While Madison was making ready these instructions at Washington—indeed, on the very seventeenth of May on which he dated and signed them—Monroe at London received from Fox formal notice of a new order in council laying new restrictions on the neutral trade. The whole coast of Europe, from the river Elbe to the port of Brest, both inclusive, was now blockaded. So much of the coast as lay between Ostend and the river Seine had already been blockaded, and into the ports and rivers of this region no neutral ship could under any circumstances go for purposes of trade. In any other port or river from Brest to the Elbe his Majesty was graciously pleased to decree, neutrals might still trade if they did not come from, and did not intend to go to, a port in the possession of any of his enemies. Vessels bearing the flag of the United States might therefore continue to enter Brest or Embden, Amsterdam or the Elbe. But the cargoes which they carried must have been made or grown in the United States, or

be the product of British looms or factories. Greatly alarmed at the character of this new order in council, Monroe again pressed for a settlement of affairs. Again he was met with excuses and delays, and again delay was followed by more complications. Word came that the Non-importation Act had passed; that Pierce had been killed by a shot from the Leander in the harbor of New York; that Pinkney was coming out to join Monroe. Eager for any excuse for delay, Fox seized on the appointment of Pinkney, and declared that nothing could be done till the new commissioner arrived. In June the new commissioner reached London. But in June Fox was stricken with gout, and in a few weeks was carried to his grave.

The illness of Fox brought up the question who should present the commissioners to the King, and a whole month went by before it was settled. Then came the question who should attend to the business of the American commissioner, and another month sped by ere that duty was given to Lord Auckland and Lord Holland. It was now the twentieth of August; but it was not till the twenty-eighth of August that an exchange of powers took place and the business began in earnest. During four months the commissioners went on holding interviews, exchanging notes and drawing up projects and counter-projects of articles. At last, early in December, a treaty, based on the despised, condemned, and hated work of Jay, was almost completed. Indeed, the day on which it would be signed seemed at hand when a few words, written by order of Napoleon, threw the negotiation into confusion. That he would never tamely submit to the orders in council of May sixteenth was certain from the day they issued. But he bided his time and chose for retaliation that moment when the battle of Jena, the humiliation of Prussia, and the triumphant entry into her capital made him master of the continent. Then, when the whole civilized world was anxiously waiting to see what he would do next, he signed that paper now famous as the Berlin decree.* In it he charged England with violating the law of nations, with making prisoners of non-combatants,

* November 21, 1806.

with seizing private property, with blockading unfortified towns and mouths of rivers, whole coasts and empires. He declared that till she mended her ways the whole coast of England, Ireland, Scotland, and Wales was in a state of blockade. All trade with the British islands was forbidden. Englishmen and property belonging to them were to be seized wherever found. All goods, wares, and merchandise, the product of England or her colonies, were made lawful prize, and half the profits of such seizures set apart to indemnify merchants despoiled by English cruisers. No vessel which had so much as touched at an English port was to be suffered to enter any port or colony of France.

The decree was directed against all neutral trade. But the only neutral trade worthy of consideration was that carried on in American bottoms. In London, therefore, men of business read it with the deepest interest. At Lloyd's Coffee-House, where the underwriters gathered; on the Stock Exchange; at the Bank; at the Foreign Office in Downing Street, the questions of the hour were, Will the decree be enforced? If it be enforced, will the Americans submit? Will the Americans resist? And if they resist will they fight, and if they fight will they join us in the war? So serious did the matter seem that Monroe and Pinkney were informed that no treaty could be made till it was known what the United States would do. The treaty which is being made, said in substance the British commissioners, binds us to observe the neutral rights of the United States. Nay, more; it yields to the United States much of what we believe to be our unquestionable rights of war. To sign such a treaty after reading the Berlin decree would be to hinder ourselves from counteracting the policy of France. To do this would be unwise unless the United States will agree to uphold her neutral right against the decrees of Napoleon. Will your Government do this? Will you consent to draw up a treaty and send it to the United States with this understanding: the treaty to become binding when your Government formally agrees to maintain her rights on the sea against the aggressions of France?

We cannot, said the American commissioners, think of

such a thing. To make such a proposition would be saying to our Government, Which will you have, a treaty with Great Britain, or a war with France? For you tell us if such an agreement be not made the treaty is lost. We know very well that if such an agreement be made France will go steadily on in her aggressions, and that war will follow inevitably. His Majesty's government, again, ought not to suppose for a moment that the United States will fail to support her right with any power. Nor should you fail to see that such an agreement made with you would amount to a threat, and would cut off all hope of coming to any understanding with France. Lords Holland and Auckland admitted that there was much truth in this, and reported what had been said to the Cabinet. While the Cabinet deliberated, negotiations went on until the twenty-seventh of December, when it was agreed to put the treaty into writing. On December thirty-first it was signed. As the commissioners from the United States were about to affix their names a note was placed in their hands by the commissioners on the part of Great Britain. This informed them that his Majesty would not recede from his position on the Berlin decree, and that if, before the treaty came back from the United States, Napoleon did not abandon his unjust pretensions, or the United States give assurance that these pretensions should be withstood, the signatures of the English commissioners would not be binding, and Great Britain would take such measures to counteract the decree as seemed best.

It was too late, however, to go back, and Monroe and Pinkney, with many solemn protestations that the note had no approval from them, signed. Before the treaty left England it became apparent that the note had no approval from the King. His commissioners had in his name promised to make no retaliation for the Berlin decree unless the United States failed to resist. He was therefore in duty bound to wait a reasonable time for the United States to act. He waited just one week, and then, on the seventh of January, 1807, put forth an order in council most ruinous to our carrying trade. No neutral vessel, it was decreed, should be permitted to trade between two ports both of which were in possession of France

or any of her allies. If caught doing so, ship and cargo were to be lawful prize.*

Intelligence of these things soon began to reach the United States. Early in February came the letter of Monroe and Pinkney declaring they were about to break away from their instructions and make such a treaty as they could. They were instantly notified that the President would not receive it. Then came the Berlin decree, and on the evening of March third a copy of the treaty. The copy was that intended for the English Minister, David Montague Erskine, who a few months before had succeeded Anthony Merry.† With the paper in his hand, Erskine at once set off for the Department of State. There was much need of haste, for the last session of the ninth Congress was to end in a few hours. If the senators were to be called to meet in executive session they ought to be summoned at once, for many of them would by sunrise of the next day be on their way home. To Erskine's chagrin, Madison received the document with every manifestation of astonishment and regret, told him no treaty could be approved which left unsettled the question of impressment and search, and declared that the note concerning the Berlin decree would of itself prevent ratification. That the Senate would have withheld its assent may well be doubted. But Jefferson, with a manly courage he often showed, determined that the senators should never see the treaty. When, therefore, toward midnight, the joint committee from the House and Senate called upon the President to tell him that Congress was about to adjourn, the senators were surprised to hear there would be no executive session, for by that time it was well known in Washington that a copy of the treaty had arrived.‡ He was, they reported, angry; had expressed his anger in strong terms, and had assured them that when the official treaty came from London he would instantly send it back.

On March fifteenth the official copy came, was filed, and Monroe and Pinkney were bidden to go on with the negotiation as previously marked out till further instructions reached

* American State Papers, Foreign Affairs, vol. iii, pp. 5–7.

† November 4, 1806. ‡ Memoirs of J. Q. Adams, vol. i, p. 466.

them. The more the treaty was studied the more did its faults stand out, so that two months passed before the instructions were ready, and two more before they reached London. Six changes were demanded. Provisions against impressment must be inserted. Restrictions on the colonial trade must be removed. The article forbidding trade with the Indies save in ships coming directly from or going directly to the United States must be stricken out. Sufferers by illegal capture must be indemnified. Two articles, giving to English cruisers and their prizes better treatment in the ports of the United States than was given to their enemies, must be altered. No such alternative as that set forth in the declaratory note could be listened to.

Before these instructions reached Monroe the Whigs once more fell from power. Lord Howick, who followed Fox, was in turn followed by Canning. Canning knew nothing about American affairs, and a new delay occurred while he studied them. At last, on July twenty-fourth, a formal offer to renew negotiation with a view to amending the treaty was made him. On that day, however, the first rumor of the attack of the Leopard on the Chesapeake reached London, and the character of the negotiation changed completely.

The affair of the Chesapeake was but one of a long series of insolent acts which British officers had been committing along our coast. For three years they had kept the country in a state of blockade. Some cruised along the coast from Eastport to Cape Ann. Some lay off the Long Island shore. Some searched vessels and impressed men within a league of Sandy Hook. One squadron passed within the capes of Chesapeake Bay and anchored in Hampton Roads. Such indeed was the impudence of the English commanders that the Driver, which in the proclamation of the year before had been commanded never again to enter any port or harbor of the United States, sailed boldly into Rebellion Roads and dropped anchor off Fort Johnson. The commandant of the fort was dumfounded. He could hardly trust his eyes, and, not knowing what to do, sent to ask the Governor how the intruder should be driven out. The Governor could not be found. Sentries were therefore posted on the wharves to cut

off supplies, and a correspondence, which was long remembered, opened with Captain William Love, of the Driver. He was reminded of the proclamation; he was asked to leave port within twenty-four hours, and a hope was expressed that no blood should be spilled. The reply of the captain was long and insolent. He declared that Mr. Jefferson's proclamation would have disgraced the sanguinary pen of Robespierre or the most miserable and petty state of Barbary; intimated that he would sail when ready; asserted his readiness to punish any insult offered to his master's flag; and threatened that, if water was not furnished him, he would take it by force. Nor was he worse than his word. A plentiful supply of water was secured, and the Driver, to the shame of our Government, sailed unmolested away. The letter of Love meantime was sent on to Washington, and at Washington was carefully placed on file.

Worse yet was the behavior of Lieutenant John Flintoph, of his Majesty's armed schooner Pogge. Early in the evening of a June day he entered the bay of Passamaquoddy, boarded and searched the shipping, fired on the town of Passamaquoddy, and sent a shot rolling between children at play. A month later he was again in port. This time he fired on a revenue boat, searched half a dozen American vessels, impressed some American sailors, and with round shot cut to pieces the sails and rigging of a schooner.

The favorite station on the coast was, however, Chesapeake Bay. In the summer of 1806 a fine French squadron of frigates and ships of the line encountered a cyclone off our coast, was dispersed, and a part forced to take refuge in Chesapeake Bay. Thither an English squadron followed and established a close blockade. There at almost any time might be seen just without the capes or riding at anchor in Lynnhaven Bay the Bellona, the Triumph, the Halifax, the Chichester, the Melampus, the Belleisle. Their tenders scoured the waters of the bay, fired on vessels that would not stop, searched those that did, and inflicted on Norfolk, Hampton, and Baltimore much of the rigor of a blockade. In April the Melampus, when off Cape Henry and not two miles from shore, made

prize of the Three Brothers, impressed ten of the crew, and detained her passengers. In May she overhauled the Mercury, rifled the mail, and examined all the papers on board. In June a revenue cutter with the revenue flag at her masthead and the Vice-President on board was hotly chased and fired on by an armed boat belonging to the squadron. Insolent as this was, an act more insolent still was soon to follow.

In the course of the month of February, 1807, the Melampus happening to be at anchor in Hampton Roads, the officers made use of the opportunity and gave a fine entertainment on board. When the festivity was at its height, when the attention of all was taken up by the toasting and the singing, five of the crew, noticing that the officers' gig was not hoisted in, slipped over the side and rowed for the shore. A shower of bullets followed them; but the beach was reached, and, giving three cheers, the men fled to Norfolk. The names of the five were William Ware, Daniel Martin, John Strachan, John Little, and Ambrose Watts. At Norfolk Lieutenant Sinclair was enlisting men for the navy of the United States, and with him Martin, Ware, and Strachan engaged for service on the frigate Chesapeake. A demand for their arrest and return as deserters was made by the English Consul at Norfolk, was duly sent to the Secretary of the Navy, and was by him referred to Commodore Barron for reply. Not one of the three, the Commodore assured the Secretary, was a subject of King George. Strachan had been born on the eastern shore of Maryland; Ware was a mulatto and a native of the same State; Martin was a negro, came from Massachusetts, and had been impressed at the same time as Ware. Of Watts and Little nothing was known, as no enlisting officer had returned their names.

Letters were still passing to and fro between the Consul, the Captain, and the authorities at Washington when more seamen escaped from the fleet. It should seem that on the seventh of March five British sailors, while weighing anchor on the Halifax, a sloop-of-war, rose, silenced the officer with threats of murder, seized the jolly-boat, escaped to the Virginia

shore,* and the next day enlisted with Lieutenant Sinclair as part of the crew of the Chesapeake. They were named Richard Hubert, a sailmaker, impressed at Liverpool; George North, captain of the main-top; Henry Saunders, yeoman of the sheets; William Hill, of Philadelphia, who had enlisted at Antigua, and Jenkin Ratford, of London. Their names were hardly on the enlistment roll when the commander of the Halifax applied for their return. Recruiting officers had been ordered not to accept British deserters. Sinclair ought therefore to have discharged the men. But he gave an evasive answer and kept them at the recruiting station. Applications were then made by the commander of the Halifax to Decatur, by the British Consul to the Mayor of Norfolk, and by the English Minister to the Secretary of State, who replied that reasons had already been given for not granting such requests. Thus protected, the men were in time sent to Washington, were there put on board the Chesapeake, and remained on board till the frigate came down the Potomac, when all but Jenkin Ratford deserted.

Most of these facts—how the men had escaped from the Melampus and the Halifax; how the Consul had made a demand for their return; how the authorities of the United States had refused to return them; how the men from the Halifax had enlisted on board the frigate Chesapeake; how they had been seen parading the streets of Norfolk protected by the American flag, the magistrates of the town, and the recruiting officer—were all duly reported at Halifax to George Cranfield Berkeley, vice-admiral of the white and commander-in-chief of his Majesty's ships and vessels on the North American station. What he heard seems to have filled him with indignation, and, while angry, he sat down and wrote an order which is not likely to be forgotten so long as the history of our country is read. He dated it June first, addressed it to the captains and commanders of his Majesty's ships and vessels on the North American station, bade them watch for the Chesapeake, and, when met without the limits of the United

* Norfolk Ledger, June 24, 1807.

States, stop and search her for deserters.* That those from the Melampus had joined the Chesapeake was then unknown to Admiral Berkeley. His order, therefore, related to the five men—Hubert, Saunders, Ratford, North, and Hill—who had escaped from the Halifax.

No authority had been given Admiral Berkeley to issue such orders. But this mattered not, and, having written them, he sent them by the commander of the Leopard to Chesapeake Bay. Three weeks later the Leopard reached her destination and delivered the orders to Captain John Erskine Douglas, of the line-of-battle ship Bellona, then riding at anchor with the Melampus in Lynnhaven. To execute the order was easy, for the Leopard had not been ten hours on the station when the Chesapeake, Commodore James Barron in command, came down the Elizabeth river and dropped anchor in the Roads. She was on her way to Europe to take the place of the Constitution, which for four years past had been cruising in the Mediterranean. Much of the labor of fitting her was done in the Eastern Branch at Washington. But, the Potomac being shallow, her heavy guns, stores, and ammunition were taken on board at Norfolk. Her gun-decks were still lumbered; the crew had never been exercised, but, as she was already four months overdue, these things were left to be corrected during the voyage, and, at half past seven on the morning of June

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* "Whereas many seamen, subjects of his Britannic Majesty, and serving in his ships and vessels as per margin, while at anchor in the Chesapeake, deserted, and entered on board the United States frigate called the Chesapeake, and openly paraded the streets of Norfolk, in sight of their officers, under the American flag, protected by the magistrates of the town and the recruiting officer belonging to the above-mentioned American frigate, which magistrates and naval officer refused giving them up, although demanded by his Britannic Majesty's Consul, as well as the captains of the ships from which the said men had deserted.

Bellona.
Belleisle.
Triumph.
Chichester.
Halifax.
Zenobia.

"The captains and commanders of his Majesty's ships and vessels under my command are therefore hereby required and directed, in case of meeting with the American frigate Chesapeake at sea, and without the limits of the United States, to show to the captain of her this order, and to require to search his ship for the deserters from the before-mentioned ships, and to proceed and search for the same; and if a similar demand should be made by the American, he is to be permitted to search for any deserters from their service, according to the customs and usage of civilized nations on terms of peace and amity with each other."

twenty-second, the wind being fair, the frigate weighed anchor and stood out to sea. In Lynnhaven Bay were the Bellona and the Melampus. Just without the capes was the Leopard. As the Chesapeake passed the English ships her officers took notice that the flags were flying and appearances were friendly. But hardly had she passed when signals were exchanged, and in a few minutes the Leopard hoisted sail and followed. The wind falling light, it was not till four in the afternoon that the Leopard came up with the Chesapeake and spoke her. Supposing the communication to be of a peaceful nature, Commodore Barron hove to and an officer was soon on deck with a letter. The note contained a copy of Berkeley's order, naming six English ships, deserters from which were believed to be on board, and expressed the hope that the search might not be resisted. Barron, supposing that he had in the crew no deserters save those from the Melampus, and noticing that the Melampus was not one of the six on Berkeley's list, answered that no deserters from the English navy were in his crew, and that no officers but his own should muster his people. When this reply reached the Leopard she at once showed signs of hostility. Noticing this, Barron bade his men go to quarters as quietly and quickly as possible. They had not, however, cleared away half the sails and cables that lumbered the gun-deck when the Leopard ranged alongside, fired a gun across the bow, and delivered a broadside. To reply was impossible. Indeed, the condition of the Chesapeake was a disgrace to the government that sent her out and to the officer who commanded her. Some of the guns were not even on their carriages. The sponges, the wads, the very cartridges would not go into the mouths of the few guns that were mounted. Not a rammer could be found. Not a powder-horn was full. The matches were all mislaid. The loggerheads were cold. After twenty minutes a gun was loaded and fired with a live coal brought from the cook's galley. Then, when twenty-one round shot had struck the hold, when the foremast and the main-mast had been destroyed, when the mizzen-mast had been greatly injured, when the rigging had been badly cut, when three men had been killed and eighteen wounded, Barron hauled down his colors and the Chesapeake was a prize.

Several British officers were at once sent on board. The purser gave up his book, the crew were mustered, and of the three hundred and seventy-five men and boys on the deck, twelve were found to be British subjects. As they were not deserters they were not molested. Three more, Ware, Strachan, and Martin, had once been members of the crew of the Melampus. Ratford, of the Halifax, was not present, but was found by the searchers hidden in the hold. These four were taken to the Leopard, which at once made sail for her anchorage within the capes. Ratford was sent to Halifax, was tried for mutiny and desertion, found guilty, and hung. His companions were not subjects of the King, and were reserved for a better fate.

The commander of the Leopard having refused to receive his prize, the Chesapeake, battered and half disabled, with every pump working and with three feet of water in her hold, made her way back to Hampton Roads. Early on the morning of June twenty-third a rumor reached Norfolk that the Chesapeake had been attacked at sea, and had struck her colors to the Leopard. The bearer of the news was not thought to be reliable. But the act seemed one the British were so likely to commit that every boat that came to Norfolk was quickly surrounded by men eager to know the truth. About two in the afternoon a boatman from the capes reported that he saw the Chesapeake at anchor in the Roads without her flag. At four, a boat with eleven wounded sailors reached the wharf. The whole town was thrown into confusion. Business stopped. Such British officers as happened to be on shore fled to their ships. The British Consul shut himself in his house and prepared for defence. While some of the citizens hastened home to cast ball and make cartridges, the rest met, resolved to send no supplies to any British ship, and to hold no communication with any British agent; declared they would deem any man who did, an enemy to his country; asked the collector of the port to use the revenue cutter to prevent supplies going out to the fleet; asked the Mayor to urge the colonel to call out the militia; asked the pilots not to take out any British ship; voted to wear crape for ten days; and named a committee to invite the people of the seaports to join them in

refusing supplies. How determined they were to keep these resolutions was soon made evident. Not a pound of meat, not a drop of water went out to the fleet. At Hampton the people boarded a sloop laden with water-casks for the Melampus and broke every one of them in pieces. That Captain Douglas, who commanded the English squadron, would patiently submit was not believed by any one. All manner of threats were therefore attributed to him. No story which any one chose to invent was too wild to be believed. It was asserted that he had sent a force to Hampton which had slaughtered and carried away fifty head of cattle; that he was about to send the Leopard to retake the Chesapeake; that he would have the French frigate Sibylle cut out; that he had positively asserted that if the President ordered him to quit the waters of the United States he would begin hostilities at once; that he had menaced Hampton with invasion. So sure were the committee of the people of Norfolk that Hampton was to be attacked, that they begged Decatur to hasten to the relief of their friends. It was Sunday evening when the request was made. At that time not a gun-boat was ready, not a sail was bent, not a man was enlisted, not a cartridge, not a day's provisions were on board. But such was the energy of Decatur that, in twenty-four hours, four gun-boats, armed, manned, and provisioned, were sailing down the Elizabeth river on their way to Hampton. In the Roads Decatur stopped them, for he, too, believed that the Chesapeake was not safe. At this, some of the volunteers who manned the boats were heard to murmur. But, a few days later, when the Melampus and the Leopard, the Triumph and the Bellona, came up the Roads, formed line of battle off the Hampton river, sent out tenders to sound the channel, fired on a private boat, and forced her to carry a despatch to the Mayor of Norfolk, they admitted that the action of Decatur was wise.

The despatch was in the handwriting of Captain Douglas. He wrote that he had seen in a newspaper the resolutions forbidding any intercourse between the ships in Lynnhaven Bay and the people in the town of Norfolk. Were this determination adhered to, the British Consul would not be able to perform his duties. To deprive him of the power to do his duty

was an extremely hostile act—so hostile, indeed, that, unless the resolutions were "immediately annulled," not a vessel should go into or come out from Norfolk. The British flag never had been and never should be insulted with impunity. The Mayor replied with spirit, and, the day happening to be the fourth of July, he took occasion to introduce a passage which was read with delight all over the country. Referring to the boasts, the threats, the underscoring of the words "immediately annulled," the Mayor called the attention of Captain Douglas to the day, and hoped that it would remind the subjects of his Majesty that the people of the United States were not to be frightened by threats or intimidated by menaces. He then went on to remark that the resolutions were passed by the people, that the town authorities had nothing to do with them, and that if Captain Douglas felt aggrieved he might seek for redress in the courts. The messenger who carried the answer to the Bellona brought back word that Douglas declared he was an abused man; that no insult had been intended; and that if the words "immediately annulled" were underscored, they had been so treated by the Mayor's clerk. His explanation was received with scorn, and preparations to defend the town against him went on as vigorously as before.

Elsewhere the indignation of the people found expression in mass meetings, resolutions, toasts, and preparations for war. At Baltimore the young men united for defence. Wilmington resolved that the conduct of Great Britain showed a disposition hostile to the peace, prosperity, and independence of the United States. Philadelphia protested that to submit to the insult would debase and degrade the nation. New York voted the attack of the Leopard as dastardly as it was unprecedented, and assured the country that, while it loved peace, it was ready for war. At Boston bad feeling was displayed, for there Federalism was strong, and wherever Federalism was powerful Great Britain had open defenders. The call for a town meeting was at once decried. Some pretended that the people had not been properly warned, and that if held the meeting would be illegal. Some went so far as to say that a meeting ought not to be held. When other people in other towns expressed their indignation, it was said, the President

had not spoken. Now he has spoken. His proclamation is posted in every coffee-house and tavern, and has been printed in every newspaper. To meet and denounce Great Britain after all this is simply to embarrass him. That the Federalists should talk of disliking to embarrass Jefferson was infinitely amusing, and the Republicans held their meeting. Elbridge Gerry was chosen moderator, and, to the horror of the Federalists, John Quincy Adams attended. Indeed, he was on the committee that drew the resolutions declaring that every Republican of Boston would, with life and fortune, support any measure, however strong, the Government might deem best.

Not to be outdone in a show of patriotism, the Federalists now held a meeting in Faneuil Hall. Again Adams attended; again he was a member of the Committee on Resolutions; again the Government was assured of hearty support. Jefferson needed it badly, for the task before him was hard. Never had a more just cause for war been given to any people. Never had a people called more loudly for war. Never was an administration less inclined to fight or an antagonist more ready to accept that issue. Whether there should or should not be war depended, then, for the moment on him and on the amount of insolence and abuse he could persuade a long-suffering people to endure and an arrogant and head-turned nation not to inflict. From his own party and his own people he had little to fear. Nothing, he declared, had so stirred men since the battle of Lexington. Yet he well knew that such outbreaks of wrath were never lasting, and that in a few weeks, if no new offence was committed, the brawlers would have begun to count the cost and would soon be as submissive as ever. To deal with England was not so easy, and to this he gave instant attention. On June twenty-fifth he heard of the outrage. But his Secretaries were scattered far and wide, and July second came before they met the President. A proclamation had meantime been written, and, with the approval of the Secretaries, was made public that afternoon. Such a document ought to have been short, dignified, and vigorous. It was, after the fashion of too many State papers of that time, long and tedious. It set forth how careful the United States had been to keep with good faith the neutrality she had assumed;

how her ports had been freely used by each belligerent; how both France and England had been suffered to mend their ships, to provision their crews, to succor their sick and dying; how, in return for this, British officers had violated our laws, abused the persons and trespassed on the property of our citizens; how complaints had been made and often disregarded; how promises of reform had been given and never kept; how in no case had one of the offenders been punished; how at last a deed had been done which surpassed in atrocity all that went before it; how a naval vessel of the United States had been followed to sea, fired on, captured, searched, and four of her crew carried off by a British ship-of-war; and how, that nothing might be wanting to complete the enormity of the crime, the Leopard had then returned to the waters of the nation whose flag she had insulted. This was indeed the summit of contempt. Well did the proclamation say that under such circumstances hospitality ceased to be a duty, and declare our ports shut to the armed ships of England. Those within our waters were instantly to leave. None others were to enter, unless bearing public despatches or driven in by an enemy or the dangers of the sea. If for any other reason they came, no citizen should supply them with food or water or hold any communication with their officers or crews.

At the same meeting at which this proclamation was approved the determination was reached to order gun-boats to places likely to be attacked, to bring home the Mediterranean fleet, and to send a messenger to London with three demands: a disavowal of the act and of the right to search armed ships; the return of the sailors taken from the Chesapeake; the recall of the British Admiral Berkeley. Two days later, while the angry people all over the country were displaying their crape, drinking their toasts, and listening to the Declaration of Independence with emotions wholly new, the Secretaries again met and discussed a call for a session of Congress. Were the members of that body to come together while the excitement was at its height, the consequences might be serious. It would, indeed, be hard to prevent a declaration of war, or at least some act of defiance that would hopelessly embarrass the tame and peaceful negotiations soon to begin at London.

Eager to prevent this, the Secretaries, under the shallow pretence that Washington was too sickly a place for Congress to come to in summer, fixed the date as the twenty-sixth of October. On the following day, July fifth, a copy of the letter of Captain Douglas to the Mayor of Norfolk was received, and Jefferson determined to call on the Governor of each State to detach its share of one hundred thousand militia, and even looked forward to a winter campaign against Canada. On the sixth Madison signed and dated the instructions to Monroe and Pinkney, and gave the packet to Dr. John Bullus to carry to England in the Revenge. The choice was a wise one, for the President had some months before appointed him Consul at a Mediterranean port, whither he was going in the Chesapeake when the Leopard overhauled her at sea. He was therefore an eye-witness of the attack, and could, if need be, describe to Monroe precisely what took place. On July seventh Jefferson and his Secretaries decided to ask the Governor of Virginia to call into active service so many troops as might be necessary to defend Norfolk and the gun-boats protecting Hampton. With this he stopped. A proclamation had been issued; gun-boats had been put in commission; troops had been detached; a day had been fixed for the assembling of Congress; and Dr. Bullus despatched in the Revenge for England. He would do no more, and, till the effect of these peaceful measures was known, the people were left to cool their anger and read such pamphlets as the hour brought forth.*

* Peace without Dishonor—War without Hope. Being a Calm and Dispassionate Enquiry into the Question of the Chesapeake and the Necessity and Expediency of War. By a Yankee Farmer. Boston, 1807. The title of the London edition is Peace without Dishonor, War without Hope. An Argument against War with Great Britain, recently published at Boston. By an American Farmer. London, 1807. The Voice of Truth; or, Thoughts on the Affair between the Leopard and the Chesapeake. In a Letter from a Gentleman at New York to his Friend. New York, 1807. Peace or War? or, Thoughts on our Affairs with England. By James Cheetham. New York, 1807. An Essay on the Rights and Duties of Nations relative to Fugitives from Justice; considered with reference to the Affair of the Chesapeake. By an American. Boston, 1807. The Tocsin; or, The Call to Arms! An Essay. Being an Enquiry into the Late Proceedings of Great Britain on her Unjustifiable Attack upon the Liberty and Independence of the United States of America. Charleston, 1807. War or no War? Intro-

Never before had any one event in our history called forth so many pamphlets in so short a time. In five months they numbered seven, and the burden of the seven was war. The purpose of some was to convince the people that there was no hope of honorable peace. The writers of others labored hard to prove that no cause whatever had been given for war. "What," said those who hated Jefferson, but, like him, were eager to have peace preserved, "what is our present situation, and what are the causes by which it has been produced? After twenty years of preposterous confidence in the guardianship of the Atlantic we find ourselves called on to take measures of self-defence. We use not the language of despondency when we say that the crisis is alarming. The enemy with his war train is on our coast. A philosopher is at the helm of state. The foe menaces. Yet our ports are unfortified and our harbors destitute of armed ships. To revenge the outrages inflicted on us is certain loss. To recede from the support of our rights is indelible dishonor. Our lives, our property are exposed in the one case; our reputation for spirit and independence in the other. What in this emergency shall we do? Do the only honorable thing that can be done. Acknowledge that we are wrong, and destroy the prolific parent of the many evils that have brought us to this embarrassed state. Need it be said that parent is our system of naturalization? Hardly were our present rulers warm in their places when the law of 1798 was repealed, the limitation of fourteen years cut down to five, and the power of naturalizing, once confined to United States courts, extended to every petty court of record in the Union. Our country became, in the language of Democrats, the asylum of distressed humanity, which is the new name for the vagabonds and wandering felons of the universe. Hordes of vulgar Irish scarcely advanced to the threshold of civilization, all the outcast villains, all the excrescences of gouty Eu-

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duced with a View of the Causes of Our National Decline and Present Embarrassments. In Two Letters. By Lycurgus. New York, 1807. An Examination of the Conduct of Great Britain respecting Neutrals. Philadelphia, 1807. Thoughts upon the Conduct of our Administration in Relation both to Great Britain and France, more especially in Reference to the late Negotiation concerning the Attack on the Chesapeake. By a Friend to Peace. Boston, 1808.

rope instantly descended on our shores, and, by the aid of the new machinery, were long since transformed from aliens to natives; from slaves to citizens. The consequences of this haste are apparent. Made Americans before they had ceased to be Europeans, given the rights of citizens before they had forgotten the persecution and the misery that drove them to us, they have introduced into our politics the savage hatred which they feel toward the country they have left, and, in the present war have steadily, nay, almost successfully, labored to throw the weight of the United States into the scale of France. Great Britain, denying the right of her subjects to expatriate themselves, has demanded and retaken them at the cannon's mouth. Having maintained her position by the use of armed force, it is now for us to say whether or not we will maintain our position by the same means. Shall we hazard a war? Dare we hazard a war? We have three thousand soldiers to defend five thousand miles of frontier. Our tottering forts are more dangerous to their defenders than to their assailants. Our gun-boats would not be formidable to a frigate run aground. Our merchant marine is exposed to the gigantic naval force of England in every sea. Shall we incur a new debt, restore the hateful system of excise, and again lay direct taxes on lands and slaves? And if laid, how will the taxes be paid? War will annihilate our commerce, stop our revenue, and ruin our merchants. The ruin of our merchants will break the city banks to which they are indebted. The small country banks will follow, and the farmers who hold their bills will be penniless. Then, indeed, will distress be universal. The farmer will give his cattle to the tax-gatherer; the mechanic will be forced to hang up his rusty tools; and the children of the fisherman will ask for bread in vain. Think not that this is the picture of a fourth-of-July orator. This is sober reality. And we are asked to bring this misery on ourselves in order that we may wage war for the protection of British deserters. Far be it from us to do such a thing. Let us rather repeal our naturalization laws, give up the subjects of England when lawfully demanded, and establish a precedent which some day will be of use to us."

"War," said the pamphleteers who were eager to see the

United States once more closely allied with France, "war is inevitable. Great Britain has done an unprovoked act which justifies a declaration. She will undoubtedly disavow the claim to search our ships of war. But she will never give up the claim that we have no right to enlist her deserters and naturalize her subjects. She will still contend that if we do enlist them she will retake them on a common jurisdiction, the high sea. This we must resist and this we can resist successfully. A commercial war will bring her to our feet. We can ruin her manufactures, starve her colonies, take Canada and Nova Scotia, and make peace at Halifax. Her power to injure us is trifling. Our revenue for a time will be lost. But we have a great surplus and can borrow what more we need. To avoid her cruisers when they are striving to destroy will be no more difficult than it is to shun them now when they are bent on searching our merchantmen. Our export trade will suffer little. Much of what is now imported can be made at home. The captures by our privateers will supply the rest. It is, therefore, nothing short of treason to question either the necessity or the expediency of war."

Smarting under the insult and heated by the pamphlets they read, the people looked upon the action of the Government as little better than tame submission. That it would be futile was plain to every one. To a service whose officers had committed with impunity, nay, had been promoted for committing the outrages which have preserved to our day the names of the Cambrian, the Leander, the Driver, and the Leopard, the proclamation of Jefferson must have been immensely diverting. It can not be possible that Jefferson himself for one moment supposed that his idle threat of cutting off water, food, and friends would keep the feeblest vessel in the English navy from our ports. Nor did it. All through July and August the frigates in Lynnhaven Bay came and went as it pleased them. In September the Jason and the Columbine entered the harbor of New York. Anchoring in the lower bay, the Jason hailed a pilot-boat passing in and demanded a pilot, and, when refused, sent an armed boat in pursuit. Not to be behind her consort in insolence, the Columbine fired on a gun-boat that was sailing about, brought it to, and

ordered a midshipman to come on board. He meekly went. Hearing of the presence of these vessels in the harbor, the collector sent down a revenue cutter to bid them depart. The cutter, dropping anchor near the Columbine, was ordered off, and, when she did not go, was boarded and searched. This visit to New York was dearly paid for by the Englishmen. The same morning the cutter was boarded the barge of the Jason came up the bay, and, having put the captain ashore, pushed off into the stream. Presently a man appeared on the landing, and holding up a letter from the British Consul, the barge was rowed in to get it. The people gathered round, some confusion ensued, and six sailors leaped ashore. The crowd cheered, shouted "Run, run!" and the seamen were quickly lost to view. Their escape created great excitement in the crews of the Jason and the Columbine, and a few days thereafter, while an officer from the Columbine was searching a pilot-boat, the men who rowed his barge pulled ashore and made their way to the city. This raised the excitement to fever-heat, and sixty-five men on the Jason rose and attempted to desert. The officers put down the disturbance. But all discipline was at an end, and the Jason was forced to quit the station and make for Halifax with fifty of her people in irons.* No attention was paid to these acts, for Jefferson was anxiously waiting the return of the Revenge.

The first intimation of the Chesapeake affair reached Monroe on the twenty-fifth of July. In the morning of that day the official despatch of Admiral Berkeley was delivered to Canning, and a note at once addressed to Monroe. A transaction, he was told, had occurred off the American coast. Could the American Minister give any particulars? His Majesty's government were truly sorry for what had happened, and, should the British officer be to blame, prompt and efficient reparation should be made. The American Minister was amazed at what he read, but had no information to communicate, and received none till, on the thirty-first of August, Dr. Bullus delivered his packet. Though ignorant of the wishes of his own government, he was not left in doubt as to

* True American, September 9, 1807.

the disposition of the King or the sentiments of the British people. Day after day the Morning Post, the Times, the Courier, the great organs of Canning's party, abused and denounced America. The British public were assured that we were striking at the vitals of her commercial existence; that we were disputing her supremacy, humbling her naval greatness, degrading her in the eyes of Europe. We were inveigling away her troops and seamen. But a few weeks' blockade of the Delaware, of the Chesapeake, of Boston Harbor would make us quickly repent our puerile conduct. From Canning he learned that England did not claim, and never had claimed, the right to search ships-of-war for deserters, and that if reparation were due it should be made. But the instructions Monroe now received from the hands of Dr. Bullus bade him go further. Not only must the sailors be replaced on the deck of the Chesapeake, not only must Admiral Berkeley be recalled and punished, and a special mission sent to the United States to announce these things, but American seamen must no longer be impressed from merchant ships. Of this Canning would hear nothing. The right had existed long before the United States existed, had not been impaired by the acknowledgment of our independence, and was a proper attribute of the sovereignty Great Britain had for ages exercised over the sea. To discuss at the same time the question of her right to search a naval ship, and the question of her right to search a merchant ship, was impossible. On this point the instructions of Monroe were positive; recollecting the fate of his treaty, he would not again disobey them. When, therefore, on the tenth of October, Dr. Bullus departed to meet the Revenge at Land's End, he carried with him the disheartening news that on the affair of the Chesapeake all negotiation was over.

So far as Monroe was concerned, negotiation of every sort was over. He had long been anxious to return to Virginia, and, thinking the present a fit time to do so, and, acting on permission previously obtained, he notified Canning of his intention, asked for a farewell audience with the King, turned over his books and papers to Pinkney, and departed for Portsmouth. Ere this he was informed that a minister would be sent to the United States to adjust the Chesapeake affair, that

George Henry Rose had been selected for the mission, that Admiral Berkeley had been recalled and his act disavowed. Considering the feeling toward America then prevalent in England, such a concession from a Tory ministry was indeed a great one. That it might not be thought too great, it was promptly followed by a proclamation recalling English seamen in the service of foreign States. Lest they should not obey, naval officers were to search for them in merchant vessels, and demand them from the captains of neutral ships of war. If found in the crew of an enemy's ship, they were guilty of high treason, and might be punished with death.*

At Portsmouth, Monroe was detained two weeks by contrary winds which, during all this time, blew steadily from the west. On November twelfth the wind changed, and almost at the same moment a little fleet of vessels set sail for America. From Portsmouth went the frigate Statira, with the new envoy Rose on board, and the Augustus bearing Monroe. The destination of each was Norfolk. From Liverpool went the Edward for Boston, and the Brutus and the Indian Hunter for New York, with London newspapers of November twelfth. The Pearl sailed from the Downs; the Revenge, which had run across to Cherbourg for despatches from Paris, was already on her way home.

The despatches she bore from Armstrong were most important. The Berlin decree of November twenty-first, 1806, had been speedily followed by one of a like kind issued by the King of Spain,† and every Spanish cruiser had since been scouring the ocean, capturing American merchantmen, and sending them to the admiralty courts for judgment. What the decision would be was doubtful, for it depended not on the will of the Spanish judges, but on the interpretation placed on the Berlin decree in France. Hearing that the Spanish Minister had applied for such an explanation as would enable the courts to pass judgment on the American vessels, Armstrong wrote to Champagny, who had just succeeded Talleyrand. He reminded the Minister of Foreign Affairs of the

* American State Papers. Foreign Affairs, vol. iii, p. 25.

† February 19, 1807.

treaty of 1800, and demanded that the Spanish Minister be told that, in consequence of the treaty, American ships were exempt from the Berlin decree. Champagny referred the request to the Minister of Marine, who referred it to the Procurer-General of the Council of Prizes, who referred it to Napoleon, who declared American ships were not exempt, and a month later the Council of Prizes applied his ruling in the case of the ship Horizon.

She had sailed from Charleston, South Carolina, in September, 1804, bound for the Island of Zanzibar, and had touched in turn at Goree, the river de la Plata, Buenos Ayres, and Montevideo. There the idea of a voyage to Zanzibar was abandoned, and, taking on a cargo suitable for an English market, the Horizon set sail for London. Bad weather drove her into Lisbon to refit, and an English frigate made prize of her as she left the port. Taken to England, the cargo was confiscated as having been put on board at an enemy's colony; but the vessel was released. Procuring another cargo, part of which was of English make, her captain started back to Lisbon, but was overtaken by a storm, and on May thirtieth, 1807, was wrecked on the Ranneyer rocks, near Morlaix. All that could be saved of the cargo and the ship were sold by the French authorities, and the question what should be done with the money came up for settlement. The Horizon had not been captured at sea, neither had she entered a port of France; she had indeed come upon the coast, but she came unwillingly, and after making every possible endeavor to keep off. How far, then, did the Berlin decree apply? Did it apply at all? Unable to decide, the Administrators of Marine at Brest asked the Council of Prizes at Paris to do so for them, and by that tribunal all the money obtained from the sale of the English goods in the cargo was confiscated for the use of the state; the rest was delivered to the captain. Armstrong protested, but the Emperor stood firm. "Say to the American Minister," he wrote, "that since America suffers her vessels to be searched she adopts the principle that the flag does not cover the goods, and that as she submits to the orders in council of England, so she must submit to the Berlin decree of France." Merchant ships of the United States might, so far as the de-

cree was concerned, still bring the products of our country to France; but English goods, wherever found, and by whomsoever owned, were fair prize of war.

It was not for Napoleon, however, to say what should and what should not come into his ports. Great Britain ruled the sea, and on November eleventh, 1807, the very day before Armstrong sent off his protest against the Horizon decree, the King in council approved new orders. To this he had been led by a series of events which broke down the neutral powers of Europe. Five days after signing the Berlin decree, Napoleon quit that city and began his campaign against Poland and Russia. He was all but defeated at Eylau in February, 1807, but crushed the Russian army at Friedland in June, and signed the treaty of Tilsit on the seventh of July. This left him free to deal with European neutrals as he chose. The only neutrals were Denmark and Portugal, and to these he turned his attention without delay. On July nineteenth the King of Portugal was commanded to shut his ports to English commerce before September first. On July twenty-ninth the Prince Royal of Denmark was bidden to choose between war with England and war with France. The threat was no idle one, and on the second of August, Bernadotte, at Hamburg, was informed that if England did not accept the mediation of Russia, Denmark must declare war on England, or France would make war on Denmark. On August seventeenth he was commanded to be ready to move into Denmark at a moment's notice as friend or foe. But the moment never came. Napoleon for once had delayed too long, and before another fortnight went round Copenhagen was in ashes, England was in possession, and the neutrality of Denmark was gone. Learning from secret sources what was happening at Tilsit, the British Ministry were convinced that the Prince Royal would be the next neutral driven to attack them. They determined, therefore, to strike first, and on July twenty-sixth a great fleet of forty frigates, twenty ships of the line, and transports bearing twenty-seven thousand troops set sail for Copenhagen. With them as diplomatic agent went Francis James Jackson, duly instructed to demand the delivery of the whole navy of Denmark as security for the safety of England.

The officers and crews were to be maintained by Great Britain, the ships kept in repair, and, when peace was made, returned in as good condition as when received. The demand was rejected. Lord Gambier, who commanded the troops, landed twenty thousand, planted batteries, and for three days and three nights Copenhagen was bombarded. Then, at the end of the third day, when half the city was a smoking ruin, when two thousand helpless citizens lay dead in the wreck of what had once been their homes, the fleet was given up to England. The seizure of every Danish merchantman in the ports of England and the confiscation of their cargoes followed.

Almost at the same time the Berlin decree began to be enforced in Holland. With the connivance of Louis Bonaparte a brisk trade had gone on between his kingdom and England; but Napoleon now gave positive orders that the trade should stop. Louis obeyed, and in the last days of August every neutral ship at Amsterdam was seized and confiscated. Made bold by the seizure of the Danish fleet and incensed at the enforcement of the Berlin decree in Holland, Lord Castlereagh wrote to Spencer Perceval, begging him to retaliate on France. Lord Castlereagh was Secretary of War. Perceval was Chancellor of the Exchequer, and, taking the suggestion, drew and submitted to the Cabinet a long paper on the expediency of retaliation. As to the policy of such a measure, so far as England was concerned, there could, he thought, be no doubt. As to the justice of such a measure, so far as neutrals were concerned, there were doubts; but he soon swept them away. In the first place, no neutral had a right to complain of a commercial restriction laid by one belligerent on another unless that restriction was expressly intended to ruin neutral commerce. This he did not propose to do. In the second place, there were no neutrals. The United States, indeed, claimed to be neutral. But she had lost that character by failing to observe the impartiality toward belligerents which is the soul of neutrality; by demanding that Great Britain should respect rules and usages she could not enforce against France; and by submitting quietly to the Berlin decree. Having thus established the justice of retaliation, Perceval went on to define the kind. He would still permit

neutrals to carry their own goods in their own ships directly from their own ports to an enemy's ports or colonies. He would still permit neutrals to bring back an enemy's goods from an enemy's ports directly to their own country. But all trade between Europe and the colonies of France and her allies must, even in neutral bottoms, go on through the ports and under the license of England.

For a month his paper passed from member to member of the Cabinet for criticism. Then, greatly modified and reduced to the form of an order, it was solemnly approved by the King in council. Whereas, the order began, Napoleon has declared the British Islands in a state of blockade, has declared all merchandise of English make to be lawful prize, and has forced nations in alliance with him to issue like decrees; and whereas the orders in council of January seventh, 1807, have not compelled Napoleon to recall his decrees, nor induced neutrals to interpose to secure their revocation, therefore it has pleased his Majesty to order that all ports and places of France, of her allies, of any country at war with England, nay, of all the ports in Europe from which, for any reason, the British flag is excluded, and all the ports of the colonies belonging to the enemies of England are shut to trade and navigation except under such conditions as his Majesty may provide. Another order of the same date made these conditions clear. In plain language, they were that all commerce between a country at amity and a country at war with Great Britain must enter at some port of the United Kingdom, or at Gibraltar or Malta, pay a certain duty, and take out a British license to trade.

Though the orders were approved on November eleventh, they were not made public till November fourteenth. That they were in existence was no secret, and in the London newspapers of the tenth, the eleventh, and twelfth of the month were positive statements that they were ready for signature, and that their purpose was to put France and all her vassal kingdoms in a state of siege. One journal was so correctly informed as to be able to announce, and to announce truly, that they would appear in the London Gazette of November fourteenth.

On that day, unhappily, every one of the little fleet of lately

wind-bound vessels was at sea, and many a week went by before a copy of the orders reached the United States. But the news the fleet did bring was bad enough. On December twelfth the Revenge passed through the Narrows and landed Dr. Bullus at New York. Word of her arrival spread fast, and the captain and crew were soon beset for the latest news from England and France. All that could be told were such idle rumors as passed current at Cherbourg six weeks before; that Napoleon had declared there should be no neutrals; that we must soon fight, and that if we joined the French, Napoleon would guarantee to us the cession of Canada and Nova Scotia at the peace. Concerning what was in the English despatches nothing could be learned, for, without an hour's delay, Dr. Bullus had crossed the river to Paulus Hook and taken horse for Washington.

As he rode away, the Edward, bearing news quite as important and very much later than his, reached Boston. She had made the run from Liverpool in the wonderful time of twenty-eight days, and carried letters and newspapers dated November tenth. The newspapers announced that new orders in council were soon to issue, that a new blockade was to be laid, and that neutrals were to be shut out from every port on the face of the earth into which English vessels could not enter. Just when these things would happen the writers did not know.

From Boston these alarming tidings were carried to New York by four express riders, and from New York were sent post-haste to Washington, where, a few days before, Dr. Bullus had delivered his packet to Madison. On the thirteenth the Augusta, with Monroe on board, reached Norfolk. On the evening of the fourteenth the Brutus, with English newspapers of November eleventh, and the Indian Hunter, with newspapers of the twelfth, arrived at New York. The news their captains brought merely confirmed what was already known—that a special envoy was on his way to the United States, and that a new attack had most probably already been made on American commerce. Yet even this was gratefully received by the friends of Government; for on that day the Non-importation Act went into force, and a long list of British

goods ceased to be imported. Whatever tended to strengthen the belief that England had once more laid a sweeping restriction on our foreign trade did much to help them in their efforts to persuade the merchants that non-importation was a wise and greatly needed measure.

By Jefferson the despatches and newspapers which thus came in upon him day after day were received with astonishment, and when on the seventeenth formal notification of the King's proclamation recalling seamen reached him, he instantly assembled the Secretaries. Seizing a piece of loose paper, he hastily wrote down the substance of a message to Congress. He told the two Houses of the determination of Napoleon to enforce the Berlin decree; he declared that new orders in council were soon to issue; pointed out that the whole world would thus be laid under interdict by England and France; and asked, if our ships, our sailors, and our goods were to be seized the moment they left our harbor, was it not better to keep them at home? In a word, he proposed an embargo. Of this every member of the Cabinet approved. But, as the proposed message made mention of facts that could not be supported by documentary proof, Madison suggested a change, and wrote out in pencil a short message which was at once adopted. He based it on the letter of the Grand Judge, Regnier, to Champagny, announcing the determination of Napoleon to enforce the Berlin decree, and on the proclamation of the King recalling British sailors serving in foreign ships, a copy of which he cut from the National Intelligencer of that morning. These communications, he wrote, would show the great and increasing dangers to which our goods, our ships, and our sailors were exposed on the high seas, and the many advantages to be expected from an embargo, or, as he expressed it, "an immediate inhibition of the departure of our vessels from the ports of the United States." As the usual hour for the adjournment of Congress had long passed when the message was approved, it could not be sent that day, and the Secretaries went back to their homes.

Nothing was said in the message regarding the length of time for which the restriction should be laid. To Gallatin this omission gave great concern, and he passed the early

hours of the following morning in writing a remonstrance, which reached Jefferson almost as soon as he had breakfasted. Gallatin reminded him that Government prohibitions always did far more mischief than could ever be foreseen; that a wise statesman would think well before he undertook to regulate the affairs of individuals; that the proposed embargo was of doubtful policy; that it had been approved hastily, on the first view of our foreign relations, based on very imperfect information, and that on the negotiations with Rose or the future conduct of England it would not have the smallest influence. But, if there must be an embargo, let it be for a short time. War, with all the privations, with all the sufferings, with all the loss of revenue it would bring, was better than a lasting embargo.* By ten o'clock the Secretaries were again assembled,† and the letter of Gallatin read. But they would not oppose the wishes of Jefferson, and when Congress met at noon the message, as Madison wrote it, and a packet of documents, were sent down by messenger.

In the bundle of papers were a copy of the new interpretation of the Berlin decree; the correspondence between Armstrong and Champagny on the subject of the interpretation; the protest of Armstrong against the condemnation of the cargo of the Horizon; and the newspaper clipping giving the proclamation of the King recalling English seamen from the service of foreign states.

In the Senate business was instantly stopped; the doors were closed; the message and the papers heard with attention, and at once sent to a committee of five. No sooner was the committee formed than the chairman asked for leave to bring in a bill. Leave was granted, and a few minutes later the bill was presented.‡ The rule requiring the three readings to take place on three different days was then suspended, and, four hours later, a bill laying an embargo on all the shipping in the

* Gallatin to Jefferson, December 18, 1807. Gallatin's Writings, vol. i, p. 368.

† Jefferson to Gallatin, December 18, 1807. Gallatin's Writings, vol. i, p. 369.

‡ What took place in committee is told by John Q. Adams in his Diary, vol. i, p. 491, December 18, 1807.

ports of the United States was on its way to the House of Representatives. There the zeal of the Republicans was quite as strong, but their haste was less. When the message of the President came down to the House, the members were debating an amendment to a bill to fortify the ports and harbors. But business was postponed, the gallery cleared, and the documents read by the clerk. When he finished, Randolph moved to lay an embargo on all ships belonging to citizens of the United States. A warm debate followed, and in the midst of it the Secretary of the Senate, with the bill in his hand, knocked at the door of the House. Randolph's resolution was at once tabled, the Senate bill read, and debate upon it begun. The House was in secret session. No report of what was said has, therefore, been preserved for us. But the meagre entries in the journal show that the discussion went on all day Friday and all day Saturday and part of Monday. Then the voting began, and, when amendment after amendment to exempt fishing vessels, to declare that the act contravened no treaty rights, to limit the embargo to sixty days, had been offered and rejected, the House long after midnight passed the bill. The yeas were eighty-two and the nays forty-four. Later in the day some verbal changes were accepted by the Senate, the act promptly signed by the President, and on Tuesday, December twenty-second, 1807, an embargo, unlimited as to time, was in force.

CHAPTER XIX.

THE LONG EMBARGO.

The embargo had not been many minutes in force when express-riders were galloping out of Washington and riding post-haste toward Baltimore, Philadelphia, and New York, with orders from Gallatin to the collectors. Speed was most necessary, and so well did the messengers perform their task that at five o'clock on Friday morning one of them crossed the ferry from Paulus Hook and roused the Collector of the port of New York from his slumbers. The nearest Republican printer was sought, and by seven o'clock copies of the law in the form of handbills were distributed about the streets. Then followed a scene which to men not engaged in commerce was comical. On a sudden the streets were full of merchants, ship-owners, ship-captains, supercargoes, and sailors hurrying toward the water-front. Astonished at this unusual commotion, men of all sorts followed, and by eight o'clock the wharves were crowded with spectators, cheering the little fleet of half-laden ships which, with all sail spread, was beating down the harbor. None of them had clearances. Many were half-manned. Few had more than part of a cargo. One which had just come in, rather than be embargoed, went off without breaking bulk. At the sight of the headings of the handbills, the captains made crews of the first seamen they met, and, with a few hurried instructions from the owners, pushed into the stream. That the Collector was slack is not unlikely, for it was ten o'clock before his boats were in pursuit.

The act did not apply to American vessels sailing from port to port along the coast of the United States; nor to foreign merchantmen in ballast; nor to foreign armed vessels in

commission; but it absolutely forbade registered or sea-letter vessels to leave the ports of the United States for those of any foreign power. Such vessels might, however, engage in the coasting trade. If they did, bonds equal to twice the value of ship and cargo must be given as security that the cargo would really be landed in the United States.

On licensed ships engaged in the coasting trade the embargo law laid no restraint. They were still at liberty to load and sail. No Custom-House officers watched them day and night. No inspection was made of their cargoes. No bond was required as surety that the cargo should even be landed in the United States. The advantages to which this might be turned were quickly seen. Indeed, the law was scarcely known when captains and owners of ships employed in the foreign trade were hurrying to the Custom-House to give up their ship registers and take out licenses to trade along the coast. A cargo of provisions would then be hurried on board, all sail spread for Eastport or New Orleans, and, under pretence of being blown off the coast, the captain would make for Halifax, St. Kitts, or Basse-Terre. And for this offence no punishment whatever was provided.

In Philadelphia on the Sunday following the laying of the embargo the streets and wharves along the Delaware front were as crowded as on a busy week-day. From every direction came drays, wagons, barges, and floats laden with flour and food to be carried to the West Indies by the pretended coasters. Such was the demand that the cost of flour rose a dollar and a half on a barrel, and the cost of bacon seven cents on the pound. Gallatin, in alarm, bade the Collector at Philadelphia exchange no more registers for coasting licenses, and, when the cargo seemed fitted for a foreign port, hold the ship. Yet the trade went merrily on till Congress passed a supplementary act to amend the faults of the first.

One section of this forbade a coaster to obtain a clearance till the owner, or the freighter, or the consignee, or the agent had given bonds to twice the value of ship and cargo that the goods should be relanded in the United States. By another section river craft and boats accustomed to ply the harbors, bays, and sounds were required to give a general bond of three

hundred dollars a ton not to engage in foreign trade. Another fixed the penalty for breaking the embargo at forfeiture of ship and goods, or, if they could not be seized, mulct the owner of twice the value, and fined the master and all engaged at any sum from one to twenty thousand dollars. Another related to fishers and whalers. While the bill was still before the House an attempt was made to have them exempted from the law. The purpose of the embargo, it was said, was to protect American merchant ships and sailors from capture by foreign powers, and to force a repeal of commercial restrictions by cutting off all trade. But the fishermen of New England were not in danger of being captured and were not engaged in trade. They were producers, and to force them to travel fifty or sixty miles each week to get a permit to chase a whale or drag a net was as unjust as it would be to force a farmer to take out a license to sow flaxseed or reap wheat. The Republicans admitted the hardship, but insisted that it must be borne. When, said they, the embargo was laid no hindrance was put on coasters, and immediately the merchants began to turn registered ships into coasters and evade the law. If no restriction is now put on the fishermen, every coaster will soon be a whaler or a fishing schooner, and, loaded with very little tackle and a most astonishing amount of food, will be on its way to Halifax or St. John's. The most that could be obtained was permission that bonds equal to four times the value of the ship and fishing tackle should be given not to touch at any foreign port during the voyage and to bring back all the catch to the United States. In this shape the President signed the bill on the eighth of January, 1808. One week later the new envoy from England presented himself at Washington.

As his mission was from the first designed to insult and not to appease the United States, he began his career before he landed. In October, Canning had asked Monroe if the proclamation excluding British ships-of-war would apply to a frigate with Rose on board. Armed ships bearing despatches or coming on public business had been expressly exempted, and to this fact Monroe in his answer called attention. But Canning chose to disbelieve him, and commanded the envoy, if any attempt were made to send the Statira out of American

waters, to enter a protest and return to England. On December twenty-sixth the frigate anchored in Hampton Roads. No order was given for her to depart. Yet Rose had the effrontery to pretend that he was in hourly fear of being sent off; that he could not land till a safe conduct was sent him; and two weeks were trifled away while notes and explanations came and went between Norfolk and Washington. At last he ventured to risk the journey, and on January sixteenth was formally received by Jefferson. Canning had instructed him on no account to begin negotiations till he had secured the recall of the proclamation of July second, 1807. When this was done he was to say that Admiral Berkeley had been recalled; that the attack on the Chesapeake was disavowed; that the men taken would be discharged, and that provision suitable to their station in life would be made for the widows and children of the sailors slain in the attack. In return for these concessions the United States must disavow the act of Commodore Barron in encouraging deserters, keeping them in his ship, and denying that they were there; acts he had never committed. At his first official interview with Madison, which took place the same day he was presented to Jefferson, Rose explicitly stated that nothing could be done until the proclamation had been recalled. Had the administration been truly patriotic, had it been truly devoted to the honor, the dignity, and the welfare of the country, Rose would have been flatly told that his demand could not be listened to for a moment, and would have been wished a safe and pleasant journey home. But Jefferson was devoted to the preservation of his popularity. The Secretaries were devoted to Jefferson, and, to help him, willingly entered on a course of conduct worthy of Burr. Madison consented to keep up the pretence of negotiation by interviews, and while he did so the Secretary of the Navy was sent by Jefferson to explain the real situation to Rose and beg hard for mercy. The envoy was told that the proclamation could not be recalled without good reason, because it would expose the President to the charge of inconsistency and of disregarding the national honor, and because it would greatly damage his popularity, which was very dear to him. Rose was then asked to make known just enough of the conditions

on which reparation would be made to enable the President to recall his proclamation without shame. He was assured at the same time that, in any event, even if there were no reparation, the United States would not declare war, but merely continue the embargo. When, in the language of Rose, he had found out "the utmost point to which" the administration "would go," he stated to Madison the overtures that had been made to him; was informed that the President knew all, and was again implored to make it possible for Jefferson to comply with the demand. For a while he stood firm. But about the first of February he was told by Madison that if he would make an informal disclosure of his instructions it would be possible to comply with the demand. The plan was to draw up a new proclamation in such terms as Rose might dictate, recalling that of July, 1807, to have it signed and sealed by Jefferson, to date it the day the question was settled, deliver it to Rose, and then sign the papers providing reparation for the Chesapeake affair. With solemn assurances given and received that the disclosure was to be most informal, and that if nothing came of it, the negotiation was to go on as if the instructions had not been seen, Rose consented. The proclamation was then framed by Rose, Erskine, and Madison, and accepted. But when the instructions of Canning began to be revealed, when it came out that acts never done by Barron must be disavowed, an obstacle was raised which no abasement could surmount. Nothing was left but to forget the informal disclosure and go back to the usual course of negotiation. Failure ensued, and on March twenty-first Rose took formal leave.

As he was about to depart he received from Pickering a bundle of letters that did no credit to the heads and hearts of the factious men who wrote them. The passage of the embargo, and above all the secrecy, the mystery, the speed which attended its passage, had convinced Pickering that it was a French measure designed for the sole and only purpose of provoking England to war. Should such a war be declared, the commercial States would be the chief sufferers and the Republicans the chief gainers; for no one could doubt that at the very first moment of real danger the people would

rally to support the Government and defend the flag; and that from the day the first blood was shed the old hatred of England would be revived, and revived with an intensity such as the efforts of a whole generation could not allay. But the United States would never declare the war. England must begin it. Should England, therefore, be patient a little longer, should she bear with a few more insults, a few more restrictive measures, the violence of the Republicans in their efforts to drive her into war would recoil on themselves. The people would be hurt by their own weapons, and, goaded on by the insults and injuries offered by France, they would turn on the administration and drive the Republicans from office. Then the Federalists would come back to power, and the interests of the United States would be identified with the interests of Great Britain.

The task which Pickering thus set himself to perform was to induce Rose to persuade Canning to let the United States alone. In doing this, Pickering deliberately and knowingly violated a statute of the United States. Ten years before, in the excitement which followed the publication of the X. Y. Z. despatches, Dr. George Logan had gone to Paris and had there attempted to do with Talleyrand just what Pickering was about to attempt with Rose.* Pickering was then Secretary of State, and so incensed was he at the meddling of Logan that at his request the famous "Logan Act" was passed by Congress,† and, slightly modified, is the law to-day. ‡ If the offence of Logan was so serious as to call for special legislation, the offence of Pickering was tenfold greater. But he cared not for laws even of his own making, and proceeded to violate the statute in every point. There was not an act which it forbade that he left undone. He "began" and "carried

* History of the People of the United States, vol. ii, pp. 409, 410, 415, 416.

† Act of January 30, 1799. Annals of Congress, 1797–'99, p. 3795.

‡ Revised Statutes of the United States, section 5335. The first violation of this statute was in 1804, when the Republican lawyers Rawle, McKean, Ingersoll, and Duponceau gave an opinion to Yrujo. Madison to Pinckney, February 6, 1804. MSS. Instructions to Ministers. Wharton's International Law, § 109. History of the People of the United States, vol. iii, pp. 35, 36. Yet another violation occurred in 1861. Mr. Bunch, British Consul at Charleston, South Carolina, urged his Government to recognize the Confederacy. His *exequatur* was revoked.

on" with the "agent" of "a foreign government," both by word of mouth and by letter, "intercourse" and "correspondence" with the intent "to defeat" what he believed to be "the measures of the Government of the United States," and he ought by the provisions of that law to have been fined five thousand dollars and imprisoned three years. Again and again he assured Rose that, eager as the United States seemed to provoke a war, she had no desire to declare one; and that, even if his mission did end in failure, the true policy of England was still "to let us alone; to bear patiently the wrongs we do ourselves"; "to maintain a dignified composure, and to abstain from war." * When at last the mission did end in failure, and Rose was about to go home, Pickering sent him letters from George Cabot and Rufus King to prove that this opinion was held "by our own best citizens," † and asked that Samuel Williams, of London, be made "the medium of whatever epistolary intercourse may take place between you and me." ‡ How well this attempt succeeded is made known by the letters Rose sent back to Pickering and by the long despatches he wrote home to Canning. In them the suggestions —nay, almost the very words of the Massachusetts Senator— are repeated and urged on the English Minister.

Had Canning doubted the sincerity of the Federal leaders in their professions of a desire for peace, his doubts might well have been removed by letters which almost at the same time came to him from a most unexpected source. There was then living in Montreal a gentleman named John Henry. He had once lived in the United States, and still had an agent at Boston. Like thousands of other men all over the country, the business of this agent was nearly ruined by the embargo, and Henry was forced to hurry to Boston and examine into his affairs. A friend of his, Herman W. Ryland by name, was Private Secretary to Sir James Craig, Governor-General of Canada. Knowing that Ryland would be inter-

* Pickering to G. H. Rose, March 13, 1808. Adams's New England Federalism, p. 366.

† Adams's New England Federalism, p. 366.

‡ Pickering to Rose, March 22, 1808. Adams's New England Federalism, p. 368.

ested to hear of the effect the embargo was producing in New England, Henry offered, or perhaps was asked, to send back careful accounts of what he saw and heard on his journey. Leaving Montreal late in February, he took the usual road to the United States, crossed the Sorel river at St. John's, entered Vermont, and reached the little town of Swanton on the shores of Lake Champlain. There he found the roads blocked with sleighs, and the whole community busy hurrying lumber and produce across the line, for a report was abroad that Congress had ordered trade with Canada to cease, and that the Collector was hourly expecting instructions to stop it. At Windsor the people were expecting war. At Boston he renewed acquaintance with his old friends, and was soon deep in the secrets of the Federalists. He attended their meetings. He learned their plans, and, from the accounts he gave to Ryland, it appears that Pickering had correctly represented their views. Men of talents, of property, and of influence in Boston, he wrote, expect that the evil will cure itself. They are sure that a few months more of suffering, of privation of all the benefits of commerce, will make the people of New England ready to quit the Union and set up a government of their own. For this the leaders were even then ready; but till long-continued distress had made the people acquainted with the cause of the evils and the cure they could do nothing. Meantime active measures were being secretly taken to rouse the people from their lethargy. In every town of importance committees had been chosen to act in concert with a central committee at Boston and to secure the adoption of a strong memorial to Congress. Copies of a model for such a memorial, expressing a firm determination never to take part in a war against Great Britain, Henry asserts he delivered to certain persons in the various towns in Vermont as he passed through them in April on his way back to Montreal. Each letter as it arrived at Quebec was shown by Ryland to Sir James Craig, and the whole series was by him forwarded to Lord Castlereagh.*

That much of the heated talk heard by Henry was due to

* Sir James Craig to Lord Castlereagh, April 10 and May 5, 1808.

the passing excitement of the hour cannot be doubted, for he reached Boston on the eve of a General Court election and just after the publication of a bitter letter from Pickering. It was addressed to Governor Sullivan, to be by him laid before the Legislature of Massachusetts. But the Governor refused to transmit it. A copy was thereupon given by George Cabot to the press, and it soon appeared both in the newspapers and in pamphlet form. The title-page of the pamphlet declares that the purpose of Pickering was to exhibit to his constituents the imminent danger of an unnecessary and ruinous war.* Undoubtedly this was true; but it was not the whole truth, for back of it lay the intention to so influence the election that John Quincy Adams should not be returned to the Senate of the United States.

John Quincy Adams, the son of John Adams and Abigail Smith, was born in 1767, in the North Parish of Braintree, or, as it is now called, the town of Quincy, Massachusetts. Of all Americans of his time, he alone may be said to have been bred a statesman. From the day when he stood at his mother's side and heard the cannon at Bunker Hill and saw the smoke go up from the burning village of Charlestown, his career had been one long training for public life. Before he was twelve he accompanied his father on two missions to Paris. At fourteen his own diplomatic career began when, as Secretary he went with Francis Dana to Russia. Little came of the mission, and, after six months spent in travel, Adams returned to Paris, where, as an assistant secretary, he helped to draw up the papers and documents used in the peace negotiations of 1782 and 1783. Two years later he might have gone with his father on the English mission; but he chose to come back to the United States; graduated at Harvard and studied law. In 1790 he was admitted to the bar, but his clients were few; his political training began to tell, and he drifted rapidly into politics. Over the signature of Publicola he attacked the doctrine of Paine's "Rights of Man." As Marcellus he defended and

* A Letter from the Hon. Timothy Pickering, a Senator of the United States from the State of Massachusetts, exhibiting to his Constituents a View of the Imminent Danger of an Unnecessary and Ruinous War. Addressed to his Excellency, James Sullivan, Governor of the State. Boston, March 9, 1809.

explained the proclamation of neutrality. As Columbus and as Barneveldt he denounced and held up to public condemnation the conduct of Citizen Genet. Services of this sort were not to go unrewarded, and in 1794 Washington sent him to Holland as Minister Resident at the Hague. From Holland he was soon ordered to repair to Portugal, but, before he started, the order was countermanded, and he went as Minister to Berlin. On the defeat of his father and the fall of the Federal party from power, he once more came back to Boston, was made a commissioner in bankruptcy, was promptly removed from the office by Jefferson, and in 1802 took his seat in the State Senate. From there, a year later, he was sent to the Senate of the United States.

His conduct on the chief question then before Congress was of a piece with his conduct on every public question on which he ever had a voice. For what might be Federal doctrine, or Republican doctrine, as to the purchase of Louisiana he cared nothing. But, considering the measure aside from politics, he declared the acquisition of the territory most desirable and the manner of the acquisition most unconstitutional. An amendment of the Constitution legalizing the purchase was therefore, in his opinion, necessary. When, however, he moved for a committee to consider such an amendment, not a Senator present would second him. From that moment he ceased to be counted a Federalist, and became a man without a party. Now his vote was with the Federalists, now it was cast for some favorite measure of the Republicans. Always, and under all circumstances, it was determined by his own independent judgment. He supported the purchase of Louisiana. He voted for the acquittal of Pickering and Chase. He introduced resolutions condemning impressment and the right of search. He voted for non-intercourse. He took part with both Republicans and Federalists in their Boston meetings on the Chesapeake affair. He was a member of the committee that reported the Embargo Bill, and he spoke and voted for it. He had now committed the unpardonable sin, and the Federalists cast him out with loathing and contempt. Yet his career did not by any means seem ended. The Republicans had of late years made great gains in Massachusetts. The

embargo was not yet felt in all its severity, and, if Adams was to be defeated, something must be done to turn every Federalist against him. This Pickering undertook to do, and did with his letter. It became the campaign document of the hour. Sullivan made haste to answer it; but his ill-temper defeated his purpose. Adams answered it with spirit and courage. But Pickering triumphed. The election was carried, and on June third, 1808, the General Court chose James Lloyd, Jr., a Senator to succeed Adams.* The insult was marked, for the choice of a successor might well have been put off till the Legislature met in January, 1809. On June eighth Adams resigned, and the next day Lloyd was elected to fill his unexpired term.†

Long before this time, however, the embargo began to be felt, and felt seriously. In the large shipping towns business of every kind fell off, and soon utterly ceased. The rope-walks were deserted. The sail-makers were idle. The shipwrights and the draymen had scarcely anything to do. Pitch and tar, hemp and flour, bacon, salt fish, and flaxseed became drugs upon the shippers' hands. But the greatest sufferers of all were the sailors. In Boston one hundred of them bearing a flag went in procession to the Government house demanding work or bread. The Governor told them he could do nothing for them, and they went off. Some sharpers next took up their cause, and sent to the selectmen a petition bearing the names of one hundred and ten sailors. The selectmen sent it to the General Court, and the General Court chose a committee to meet twenty-five of the signers. Six came to the meeting. From them it appeared that the petition had been drawn by an unknown man: that he sat at an open window, and whenever a sailor went by called him in and made him put down his name, or, if he could not write, put it down for him. As more than a third of the names were thus obtained, the petition was not heeded. At New York the Common Council thought for a time of employing the sailors to

* In the Senate Adams had 17; Lloyd, 21. In the House Adams received 213; Lloyd, 248.

† The term of Adams ended March 4, 1809.

grade the streets, cut down hills, and fill up swamps and deep lots. But a better arrangement was finally made with the officer in command of the Navy Yard. The sailors were to sign articles to remain in the service of the United States during their own pleasure, and do such work as the commanding officer should prescribe. The Common Council were to find food, grog, fuel, candles, and pay. The sailors, who had a wholesome dread of the discipline of the navy, at first declared they had rather starve than sign; but when the Common Council promised they should not be trepanned, great numbers made haste to sign. In Philadelphia a band of seamen with a flag paraded the streets, drew up before the State House, and sent a committee in to see the Mayor. The Mayor assured them he had no power to grant any relief, told them such conduct was highly improper, and ordered the flag put away. When this was done he went out, spoke a few words, and advised them to seek help from the Chamber of Commerce, which immediately took up the consideration of the best way to employ the idle sailors, and soon had them at work making canvas, rope, coarse mats, oakum, gaskets, and points.

The Republican newspapers praised this conduct as most patriotic; but the Federal journals ascribed it entirely to fear. Every one knew that sailors were a bold, reckless, law-defying set. They were not filled with that love of France so often shown by the philosophic President. They were not inclined to starve in idleness at home in order that the cause of Napoleon Bonaparte might flourish abroad. It was well, therefore, to feed and pet them, lest, cold, hungry, and mad with rum, they should rise, man their ships, and set at naught not only the embargo, but even Mr. Jefferson's gun-boats, so carefully drawn up along the coast. Quieting the sailors, however, would do but little good. The ship-chandlers, and sail-makers, and rope-walkers, the merchants and the shop-keepers, would quickly feel the blight, and, long before spring came, the farmers would be crying out that their produce did not bring a cent. Then would come failure to pay the interest on their mortgages, and the Sheriff would next be busy in every State dispossessing men who, but for the embargo, would have been growing richer day by day. Embargoes, the Federal

writers would say, have hitherto been laid for some good purpose: to catch sailors to man a fleet; to keep intelligence of an intended expedition from reaching an enemy; but never before has an embargo been laid to keep ships of a neutral nation from falling into the enemy's hands. The act is foolish and premature. Is an occasional loss by seizure to be compared with the sure and universal loss by embargo? Suppose that, instead of the articles of our commerce being shut up in ports without the smallest prospect of a market, they had been suffered to go to Europe and the Indies. What then would have happened? Two ships in a hundred would probably have been seized by the French. Some would reach Europe and meet a fine market. Others would go to England, get a license to sail to a Baltic or an Adriatic port, and there sell at great profit the flaxseed, the tobacco, the rice, which now lies rotting on a hundred wharves while the notes given in payment are protested at the Exchange. Can any man in his senses believe for one minute that the embargo is anything else than a blow aimed at the commerce of New England and the maritime greatness of our country? "The act ought," said one writer, "to be called the 'Dambargo.'" "Our President," said another, "delights in the measure because the name hides so well his secret wishes. Read it backward, and you have the phrase, 'O-grab-me.' Divide it into syllables and read backward, and you have the Jeffersonian injunction, 'Go bar 'em.' Transpose the seven letters of the word, and you will have what the embargo will soon produce, 'mob-rage.'" *

* The squibs written on the embargo were countless, and, bad as they were, a few specimens deserve to be given:

Why is the embargo like sickness?
Because it weakens us.

Why is it like a whirlwind?
Because we can't tell certainly where it came from or where it is going; it knocks some down, breaks others, and turns everything topsy-turvy.

Why is it like hydrophobia?
Because it makes us dread the water.

If you spell it backward what does it say?
O grab me!

In defence of the justice and prudence of the embargo the Republicans had much to say. They allowed that the measure was most serious, but protested that it could no longer be put off. They recalled how Great Britain, by interpolations in the sea code of nations, had provoked the Berlin decree of November, 1806; how the allies of France had adopted this decree in 1807; how Great Britain had searched our ships, how she had impressed our seamen, killed our citizens, and insulted our towns; how her officers had scorned to obey the proclamation of the President, and how she had at last commanded every one of her seamen in the service of a foreign state to return at once to the service of his King. They argued that the ocean had become a place of danger, robbery, and disgrace; that a dignified retirement was all that was left us, and would be found most effective in the end; that England would feel the loss of naval stores and supplies so essential to her colonies; that France would suffer by the loss of the luxuries brought from her colonies by our neutral ships; that Spain would be reduced to the verge of starvation by the lack of imported food. But the strongest defence of all was found in two state papers which just at this time reached America and were promptly sent to Congress. One was the long-expected British orders in council of November eleventh, 1807. The other was an order of Napoleon in retaliation for the English order, which has ever since been known as the Milan decree. On November fourteenth, 1807, the day whereon the merchants of London read the new orders in council in the Gazette, Napoleon was at Fontainebleau. There in October he had signed the treaty which sealed the

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Another is in verse:

Embargo read backward, O-grab-me appears,
A scary sound ever for big children's ears.
The syllables transformed, Go bar 'em comes next,
A mandate to keep ye from harm, says my text.
Analyze Miss Embargo, her letters, I'll wage,
If not removed shortly, will make mob-rage.

A caricature of the time represents John Bull holding the head of a cow. "Bony" holds the tail, and Jefferson, on his knees, is milking her. He looks toward Bonaparte for orders, and, as he has no pail, seems to be asking how long he shall continue the waste.

fate of Portugal and Spain, and from thence, November fifteenth, he departed for Italy. Passing through Milan and Verona, he reached Venice, turned back, and on December fifteenth was again at Milan, when a copy of the Gazette containing the orders overtook him. He seems never for a moment to have hesitated what to do, and in forty-eight hours his retaliatory order was framed, signed, and issued. Thenceforth any ship, whatever its nationality, that suffered an English officer to search it, or made a voyage to England, or paid any tax whatsoever to the Crown of Great Britain, was denationalized, and whether it came to a French port, or to a port of an ally of France, or, on the high sea, fell into the power of a ship-of-war or privateer, was good and lawful prize. The British Isles were in a state of blockade both by land and sea, and any ship that went into or came out of a port of England on its way to or from any port in the British possessions anywhere on the face of the earth, East Indies or West Indies, India or America, or entered or left places occupied by English troops, was to be seized wherever found.* Some earnest patriots did not fail to notice that the day this decree was made public was the anniversary of the birth of Washington.

By that time another prediction of the Federalists began to be fulfilled. The farmers were feeling the embargo. In expectation of a ready market and good prices, they had mortgaged their old land to buy new, and had thus been enabled to raise greater crops of wheat and grain than ever before. In Pennsylvania, in the valleys of the Mohawk and the Hudson, in Vermont, every mill had, until the streams were frozen over, been grinding day and night. In some places the farmers had been holding back their flour in hopes that the supply near the great cities would be quickly shipped and the price put up. In others they were waiting for snow to make transportation more easy. But ere the high prices and the snow came the ports were closed, the demand for flour stopped, and the farmers found themselves in possession of a staple for which they could not get the cost of sowing, reaping, and

* American State Papers, Foreign Relations, vol. iii, p. 290, Annals of Congress, 1808–1809, pp. 1751, 1752. National Intelligencer, February 22, 1808.

grinding. If they were honest men, their lot was indeed a hard one. If they chose to be dishonest, two courses lay before them. They might, if living near the boundary, turn smugglers, and hurry their flour over the line to British territory. They might sell it to some one who, tempted by the great profits to be made, was ready to take the risks they would not. Both ways were used, and by the middle of February the embargo was daily broken in a dozen bold, daring, and ingenious ways. The law applied to registered, sea-letter, and licensed ships. But boats of five tons burden and less were not required to register, or take out sea-letters, or licenses to trade. On such, therefore, the embargo had no effect, and they were at once used to evade it.

Along the Atlantic border the flour was sent to the nearest available port, hurried into a schooner or a snow, bonds were given not to land it out of the United States, and all sail was spread. If the food was intended for the West Indies, the vessel ran down the coast to St. Mary's, a little hamlet in southern Georgia on the American side of St. Mary's river, then part of the boundary line between the United States and the possessions of Spain. There the barrels were put on board of boats of less than five tons and carried over the river, or to a sloop waiting off the coast for a cargo for Bermuda or St. Kitts. When the provisions were intended for Great Britain the run was up the coast to Eastport, and then over the Passamaquoddy in small boats, and so to the Halifax market.

On the Canadian border the smuggling was bolder and more impudent still. In Vermont a favorite way was to load a dozen sleds or wagons and drive toward Canada. A hill with steep slopes and close to the boundary line would be selected and a rude hut put up on the summit. The hut must be so made that when a stone was pulled from the foundation the floor would fall, the sides topple over, and the contents of the structure be thrown on English ground. When thus built, the sleds would be unloaded, the potash and flour, the pork, and the lumber put in, the stone removed, and the barrels sent rolling into Canada. Once there, they became English property and were quickly carried off.

So many and so bold did the evasions become that the

members of the Committee on Commerce and Manufacture took up the matter and bade their chairman move that they be instructed to inquire if any amendment to the embargo laws was necessary. When the instruction was given the committee at once asked leave to report a bill, and, leave being given, instantly presented it. At that particular time, the eleventh of February, Rose had but lately concluded his arrangement with Madison, and had not yet made known his demand for a disavowal of the reputed acts of Commodore Barron. It is likely, therefore, that word was sent to the chairman of the Committee on Commerce not to press a bill whose restrictions would have been felt severely along the frontier of Canada and Nova Scotia. However this may be, nothing more was done till February nineteenth, when the mission of Rose had really ended. Then the House by a great majority went into Committee of the Whole and took up the Supplementary Bill. In the long debate which followed much was said about the expediency, the necessity, the justice, the hardships, the futility of such a measure. But the sensational speech, the speech which threw the committee into violent commotion and roused the evil passions of certain members, was made by Barent Gardenier, of New York, late on a Saturday afternoon. He described the bill, and correctly, as intended not to lay an embargo, but to prescribe non-intercourse. He declared that its true meaning was that the people of the United States should sell nothing but what they sold to each other. He complained that no one could give any reason for the acts; that an unseen hand was guiding the country on step by step to ruin; that mystery overshadowed everything; that the representatives knew nothing, and were suffered to know nothing; that they were mere automata; they legislated, but knew not why or wherefore; they moved, but knew not who moved them; and that under this secret influence they were "forging chains to fasten" the country "to the car of the imperial conqueror." Again and again in the course of his speech members sprang to their feet and called him to order. Some begged the Speaker to stop him; others cried out, "Let him go on." Again and again the Speaker commanded him to keep within the rules of propriety. When he had

done, the House rose. But on the following Monday member after member repelled with scorn the charge of French influence. The language of one was so strong that Gardenier sent a challenge; the two met on the duelling grounds at Bladensburg and Gardenier was severely wounded.

When passed, the law provided that no boat of five tons or under should leave any port unless bonds in twice the value of boat and cargo had been given to land the cargo in the United States. If the boat had never been employed in foreign trade, if its use had always been confined to rivers, bays, sounds, and lakes within the jurisdiction of the United States, a bond equal to two hundred dollars per ton would be sufficient. If not masted, or, if masted, not decked, and confined to rivers, bays, or sounds not adjacent to foreign territory, no bond was required unless the Collector thought one necessary, in which case he might exact thirty dollars per ton. Export by land was next forbidden, and every cart, wagon, sleigh, or wheeled conveyance so engaged, with the animals dragging it and the goods it contained, was declared forfeit, and a fine not greater than ten thousand dollars laid upon the owners.

By this act the embargo was spread over every lake, bay, and river in the country. Henceforth every market-boat that carried potatoes and cabbages over the river from New Jersey to New York; every sloop that came down the Hudson with skins and flour; every dugout that fished and dredged for oysters in Chesapeake Bay; every broadhorn that floated on the Ohio river; every sail-boat that went out with a pleasure party to sail or fish, must be furnished, if the Collector wished it, with a clearance.

To enforce the law in the seaports and on the large bays was a matter of no great difficulty; but to enforce it on the Canadian border was all but impossible. The ease with which it could there be evaded, the profits to be made by evading it, turned whole communities into smugglers and embargo-breakers. This was true along the whole frontier from Eastport to Michilimackinaw, but especially true at such convenient spots as Detroit, Buffalo, Lewiston, Sackett's Harbor, and, above all, Lake Champlain. Every letter that came down from St. Albans or Whitehall declared that the most open and elaborate

preparations were making to break the embargo, that produce of every sort was being gathered on the lake shore, that timber was being felled, and that the moment the ice was gone great rafts loaded with all the produce raised in Vermont would go down the lake to Canada. To stop this flagrant disregard of law, Jefferson determined to try the effect of a proclamation, declared the country round about Champlain to be the seat of a conspiracy to defeat the execution of the law, described the people as insurgents, and called on them to desist.* St. Albans was the chief town in the region thus put under ban, and there the proclamation gave such great offence that the people in town-meeting answered it. They told the President that stoppage of the ocean trade had ended the sale of potash and lumber in the maritime States; that the men he was pleased to accuse of forming insurrections had then opened a trade with Canada lest they should suffer for the very necessaries of life; that, as the purpose of the embargo was the protection of American seamen, ships, and goods on the high seas, they were at a loss to know why land trade had been embargoed; that they were astonished to be called in a state of insurrection, and that they wished the act of March twelfth might be suspended.

While the President was writing his proclamation the House was considering the fitness of giving him power to do just what the men of St. Albans requested. On the eighth of April George Washington Campbell, Chairman of the Committee of Ways and Means, rose in his place and reminded the House that the end of the session was near at hand. What might happen before they met again no one could say. A change might take place in the conduct of Great Britain and France. The orders and decrees might be revoked, and he therefore moved to give the President power in such an event to suspend the embargo till Congress met again. The resolution was sent to the Committee of the Whole. A long and rambling debate followed from day to day till April nineteenth, when a bill came down from the Senate providing for

* Proclamation of April 19, 1808. Statutes at Large of the United States. Annals of Congress, 1808–1809, p. 580.

the very power the House was hesitating to grant. The resolution of Campbell was instantly dropped, the Senate bill was passed, and the President authorized, if he saw fit, to suspend the embargo till twenty days after the next session of Congress began.

The chance of using this power was small indeed, and five days later Jefferson signed a third Supplementary Embargo Bill more stringent than any that had gone before. The greed of a South Carolina shipper had brought to light a new and unsuspected way of smuggling. Having loaded his ship with five hundred hogsheads at Charleston, he offered bonds and applied for a clearance to carry that quantity of New England rum to New Orleans. Astounded at so large a shipment of New England rum from Charleston, the Collector sent an inspector to find out what it meant. Then the truth came out. The hogsheads were full of rice. The rice was to be taken to Havana, sold, and a cargo of rum bought and carried to New Orleans. There the Collector would certify that the rum had been landed, and the certificate taken back to Charleston would release the bond.

To meet such cases it was now provided that no ship could get a clearance unless the loading was done in the presence of a revenue officer, nor sail to any port of the United States near foreign territory without special permission from the President, nor sail to any port whatever if the Collector thought the intention of the captain was to evade the embargo laws. Foreign-owned vessels were forbidden to go from port to port of the United States. Collectors were commanded to seize unusual deposits of food and lumber in ports adjacent to foreign soil. Commanders of public armed vessels and gun-boats, and masters of revenue boats and cutters, were bidden to stop and search any vessel belonging to American citizens they might believe to be engaged in illegal traffic. No boat or ship of any kind, large or small, could navigate any bay or river, sound or lake, packets and ferry-boats alone excepted, till a manifest of the cargo had been given to a collector or surveyor and a clearance obtained The cost of this clearance was fixed at twenty cents.

The act went into force on the twenty-fifth, and a few

hours later the tenth Congress rose. In the last moments of the session, when all business was over, an incident occurred which, trivial as it seems, was the outcome of a rapidly-growing sentiment, and, some months later, was repeated in the Legislature of almost every State in the Union. William Bibb, of Georgia, moved that "the members of the House of Representatives will appear at their next meeting clothed in the manufacture of their own country." A dozen fierce Republicans attacked him. Macon, of Georgia, declared, with much heat, that Congress had nothing to do with the clothing of its members; that the resolution could never be enforced; that if it were a pledge he would not give it; and that if it were a law he would not obey it. John Rhea, of Tennessee, told the House that he, too, would wear such clothes as suited him. Eppes, of Virginia, defended the resolution as likely to encourage a kind of independence greatly needed. But the opposition was so savage that Bibb withdrew the motion, and the members went home. Fifty-eight acts had been passed. Among them are eight of much importance. One provided for the building of one hundred and eighty-eight gun-boats.* Another set apart one million dollars for the defence of the ports and harbors of the United States.† A third continued the Mediterranean fund.‡ A fourth appropriated half a million for the purchase of arms, saltpetre, and sulphur.# A fifth ordered a hundred thousand militia of the States to be in readiness "to march at a moment's notice."‖ A sixth empowered the President to sell arms to the States.△ By a seventh the regular army was increased by five regiments of infantry, one of riflemen, one of light artillery, and one of light dragoons to serve for five years.◊ The eighth continued in force the old act of 1805 for the preservation of peace in the harbors of the United States.↕

The supplementary embargo of April fell with peculiar severity on men whose business it was to supply the large

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* Act approved December 18, 1807. The sum appropriated was $852,500.

† Act approved January 8, 1808.

‡ Act approved January 17, 1808.

Act approved March 11, 1808.

‖ Act approved March 30, 1808.

△ Act approved April 2, 1808.

◊ Act approved April 12, 1808.

↕ Act approved April 19, 1808.

towns with provisions. Up the East river, some ten miles from New York, lived a miller whose custom it was to buy wheat in the city, carry it on his own boat to his mill, and bring back the flour in the same manner to New York. But under the new law every trip to the city became a source of endless expense and annoyance. Before he could roll a barrel into his boat he must go to New York, obtain a clearance, and give bonds to bring the flour to that city. As soon as it was landed he must get a certificate from the inspector, and with this repair to the Custom-House to prevent the forfeiture of his bond of two hundred dollars for each ton of his boat. Under this same bond he might then obtain leave to buy a certain quantity of wheat and carry it to his mill. Once there, he must go before a magistrate, six miles away, and pay a good round fee for a certificate stating that the wheat had really been landed at the mill, and this he must bring back to the Collector in New York within thirty days, or else his bond was forfeited.

Harder still was the fate of the men at Greenwich, a little town some thirty miles up Long Island Sound. The farmers thereabout supplied New York with lamb, veal, poultry, and potatoes, which eight small craft were constantly busy in carrying to the city. By the new law the owners of these vessels were now required to clear at the Custom-House and give bonds to land their potatoes in New York. But Greenwich lay within the jurisdiction of the Collector at Fairfield. Fairfield was twenty miles away, and this journey they were forced to make before each trip to get their clearance and their bonds. When they came back they were again forced to make the same journey to present their certificates of landing at New York, and have their bonds cancelled. As each boat made two trips a week, the owners spent most of their time on the road between Fairfield and Greenwich.

Lest the act should not prove stringent enough, the President followed it up with a circular addressed by the Secretary of the Treasury to the Collectors of Customs. No more shipments of flaxseed, of pot and pearl ashes, of lumber, of naval stores, of flour, or food of any kind were to be allowed unless undoubtedly wanted for consumption at the place they were

shipped to. He could see no reason why flour should go from one port to another on Chesapeake Bay; or from any port whatever to the Delaware or Hudson rivers. The restriction on flour fell most heavily on Massachusetts, New Hampshire, South Carolina, Georgia, and the Territory of Orleans, for the flour made in these regions was far short of the amount consumed. Jefferson therefore addressed a circular letter to the Governors, suffering them to grant permits to respectable merchants to bring in so much flour as might be needed to prevent a bread famine.* Federalists declared that the Governors sold this right, nicknamed the permits "Presidential Bulls and Indulgences," and called the men who used them "Patent Merchants" and "O-grab-me Pets." That the Governors sold them is undoubtedly false; but the charge was firmly believed and obtained some color of truth by the plentifulness of the permits. Indeed, those granted by James Sullivan, who governed Massachusetts, soon became as much an article of commerce as government scrip or bank stock. Any man who had rendered him a political service, or could call him a friend, had but to go to the Government-House in order to come away with a license for a hundred, or five hundred, or a thousand barrels in his pocket. These were promptly sent to New York or Philadelphia, or any port where flour had accumulated, and there sold to the highest bidders, who took good care to make the shipments so slowly that the price in Boston did not fall.

By the fourth of July the permits issued by Governor Sullivan amounted to fifty thousand barrels of flour and one hundred thousand bushels of corn. Gallatin in alarm complained to Jefferson, who at once wrote to Sullivan to stop importing provisions.† The Governor was a Republican; but he was also a New England man, and, catching the spirit there prevailing, he declined to obey, and sent back a long dissertation on the diet of the people of Massachusetts.‡ The seaport towns, he explained, were supplied with bread almost

* Jefferson to the Governors of Orleans, etc., May 6, 1808.

† Jefferson to James Sullivan, July 16, 1808. Jefferson's Works, vol. v, p. 317.

‡ Sullivan to Jefferson, July 23, 1808.

entirely from the Southern and Middle States. The people of the interior lived on a mixture of Indian corn and rye, and made their white bread and pastry with flour brought from the southward and carted into the interior. This accounted for the immense importation of flour. The immense importation of corn was due to a demand for it as food for carriage horses, draught horses, poultry, and hogs. Let the certificates be stopped, and in three weeks the State, from one end to the other, would be a scene of mob violence, riots, and convulsions.

In the South the legality of the circular was tested in the courts. A registered ship called the Resource had come to Charleston about the time the embargo was laid. Fearing that worms would destroy his vessel if left idle, the owner determined to send her to Baltimore, and advertised for freight. All he could get was six hundred bales of cotton. To put to sea so lightly laden would never do, and he therefore agreed to take two hundred barrels of rice, freight free, as ballast.

When, however, application was made at the Custom-House to give bonds and get a clearance, the Collector refused. He admitted that he believed the voyage was to be made with honest intention. He admitted that the embargo laws did not warrant him in detaining the vessel, but pleaded in justification the circular letter of Gallatin. The merchant at once applied for a mandamus, and the case, toward the end of May, was submitted, without argument, to the Circuit Court. On the bench were Justice William Johnson and the District Judge, Thomas Bee. Johnson was a native of South Carolina, was a stanch Republican, a warm friend of Jefferson, and the first of his appointments to the Supreme Bench. Judgment for the Collector therefore seemed certain. But, to the amazement of the Republicans and the great concern of the President,* the mandamus was issued, the circular pronounced illegal, and the decison made that it was for the Collector, acting under the law, and not for the President, to decide what should and what should not go out of the port of Charleston. Jefferson called on the Attorney-General for an official opinion, was told that the Circuit Court had no power to

* Jefferson to the Governor of South Carolina [Pinckney], July 18, 1808.

issue a mandamus in the case,* and gave the opinion to the press. Justice Johnson answered in a temperate and carefully framed reply.† But Jefferson never forgave him, and he was a few months later censured by the Grand Jury of the Circuit Court of Georgia for attempting "to defeat the intentions and salutary measures of our Government."

To the explanations of Sullivan, Jefferson turned an equally deaf ear. He was fully determined to support the embargo at any cost. The whole coast of New England was patrolled by gun-boats, frigates, and revenue cutters. The negligent Collector at New Bedford was removed. The Collector at Salem was threatened. The importation of flour into Boston was ordered to be stopped, and General Dearborn commanded to be ready at any moment to put down insurrection by force. When the people of Nantucket Island petitioned for leave to bring in food Jefferson refused, and gave it as his opinion that if they wanted food it must be because they had smuggled away what they ought to have kept. In his eagerness for the embargo he forgot all law and took to himself powers which, had they been assumed by a Federalist, he would have been the first to condemn. He made himself censor, and put whole towns under ban. He made himself commissary for the nation, and declared what and how much the people should eat. The bakers of New York applied to the Secretary of the Treasury for leave to bring in Southern flour, assuring him that the citizens would not be content to eat bread made with the wheat grown in New York State; but Jefferson declared this a libel on the citizens and the flour, and refused. "The next application," said he, "will be for vessels to go to New York for the pippins of that State because they are higher flavored than the same species of apples growing in other States."‡ "You know," he wrote two months later to Gallatin, "You know I have been averse to letting Atlantic flour go to New Orleans merely that they may have the whitest bread possible."# When the captain of a schooner owned at

* The opinion of Rodney is dated July 15, 1808.

† Charleston Courier, October 17, 1808.

‡ Jefferson to Gallatin, July 12, 1808.

Jefferson to Gallatin, September 9, 1808.

Buckstown, on the Penobscot, applied to the Secretary for leave to sail, the President announced a principle more startling yet. The character of the place, he said, must be considered. If it were found to be "tainted with a general spirit of disobedience," then the individual must give positive proof that he "has never said or done anything himself to countenance that spirit." * A little later he went further, and announced the principle of attainder. He ordered Gallatin to see to it that no vessel should leave port "in which any person is concerned either in interest or in navigating her, who has ever been concerned in interest or in navigation of a vessel which has at any time before entered a foreign port contrary to the views of the embargo laws, and under any pretended distress or duress whatever." † When the people of the Champlain region applied for permission to run a packet on the lake they were told plainly that the present was no time to open up "new channels of trade with Canada and multiply the means of smuggling." ‡

The products of the Champlain region were lumber, potash, pork, and brandy. For these a ready market had always been found at Albany and at the thriving towns of Fort Edward and Whitehall. But the embargo had cut off the trade, and the people, to get a living, turned toward Canada. Out of the lumber they made rafts, on the rafts they stacked their potash, pork, and liquor, spread sails, built rude shelters, and, with the help of the south wind, floated the whole down the lake and over the line into Canada. Windmill Bay was a favorite place of shipment. The shores were said to be covered with produce. Repeatedly as many as twenty-five rafts went out, favored by the darkness and a strong south wind. Some militia, indeed, were sent from New York and Vermont to stop wagons found travelling the old road to Canada, and to cut off rafts near the line; but they did little. One dark night in May a garrison seized a sloop with one hundred and fifty barrels of ashes and ninety more of pork; but the next night a bateau with twenty-five barrels passed the fort un-

* Jefferson to Gallatin, November 13, 1808.

† Jefferson to Gallatin, December 7, 1808.

‡ Jefferson to Gallatin, September 9, 1808.

harmed. Sometimes a revenue cutter would chase a smuggler up the Onion river and exchange shots, or, as on one occasion, have a pitched battle. Sometimes a sharp encounter would be had with raftsmen, which generally resulted in the defeat of the militia. If a raft was captured, the captors were almost sure to be surprised and the raft cut out a few nights later. At Alburg, on Missisque Bay, the garrison were deliberately attacked, captured, and a dozen barrels of potash carried off. Another night forty men, armed and painted as Indians, surrounded some troops near the boundary and frightened them into a profound sleep while a raft with thirty sails and measuring ten acres in surface floated slowly by into Canadian waters.

At Oswego, two lake craft having been refused clearances for Sackett's Harbor, the captains went off without clearing. The Collector gave chase in a revenue cutter; but, finding the crews armed and ready to fight, he suffered them to go on. This so enraged the Republicans that forty men of Marcellus volunteered to march to Oswego and enforce the embargo, while the Governor of the State begged the President to proclaim Oswego in a state of insurrection.

At Sackett's Harbor an affair took place which is a good example of what was constantly happening along the lake border. One day in September two boats loaded with ashes came down the Big Sandy Creek. As their owners noticed troops at the mouth of the creek, the boats were quickly put about; but they had been seen, and were followed the next day by the soldiers, who found the boats sunk opposite the house of a Captain Fairfield. Landing, they saw the masts, sails, and oars scattered about, the ashes stored in the house, and, hard by, a swivel gun. The smugglers meanwhile were busy cutting down trees and throwing them into the creek to hinder the return of the troops by water. Learning this, the officer in command broke into the house and made a hasty retreat with the potash and the swivel. Captain Fairfield was not in the county. But his wife promptly complained to the nearest magistrate, who issued a process in civil action. The constable, being afraid to serve it, gathered a posse of thirty men and started with them for the lake shore. There he

formed a line and called on the troops to surrender or fight. They chose to fight, charged the posse, scattered it, and took ten prisoners. Not long after, the people of Ellisburg were again thrown into alarm by the appearance of the troops, who came, they said, to take the magistrate who issued the process. This magistrate was Judge Sackett, a man well known in those parts, and the founder of the town which still bears his name. But he was not to be taken, and, having found two citizens to make charges of felony, he issued another warrant and again gave it to the constable to serve. This time the hue and cry was raised, and several hundred men were soon gathered in Ellisburg. To them the constable read the law of hue and cry and the law for arming, and bade them meet armed at sunrise next morning. Eighty came, but the constable, not being sure that he could command armed men until he had himself been opposed by arms, dismissed them. Determined not to be deprived of their vengeance, the Ellisburgers now sent out a call to the people of Jefferson County to meet in their turn and take into consideration the legal way of seizing certain felons who had bound and carried off ten citizens while attending to an affair of the law. The meeting was duly held, and some strong resolutions on the subject drawn up.

Violence, insolence, and law-breaking were now frequent along the whole border. Five open boats, full of potash, attempted to make the run from Fort Niagara to Canada, and, despite the troops and the Collector, three succeeded. On Salmon river, in Oneida County, the crew of a revenue cutter behaved so insolently that the people rose, seized them, and put them into the jail. At Lewiston twenty men came over from Canada and carried off a quantity of flour by force. They were believed to have gone to Canada for that very purpose. A ship showing no name and carrying no papers was taken off Squam Bay and sent into Charlestown. Those who pretended to know, said she hailed from Newburyport. There the embargo was most hated, and there the shippers and seamen were most active in evading it. On one occasion a sloop full of provisions made her escape from the town. Some officers who attempted to stop her were beaten by the crowd on the

wharf and fired at by the sailors on the vessel. Nor was she taken till a cutter armed with troops had chased her for ten hours. On another day nine ships hoisted sail and defiantly started out. Again, a schooner laden with fish put out to sea. A revenue cutter brought her back; but the people again rose, and were with difficulty prevented from destroying the cutter at the wharf.

In the midst of privations, hardships, poverty, and downright suffering, it would have afforded the people some consolation to know that the embargo was producing an effect abroad. Unhappily, the very reverse seemed to be the case. In England the meeting of Parliament on the twenty-first of January, 1808, had been followed by three months of hot discussion of the orders in council. Perceval and Hawkesbury, Canning and Castlereagh defended them from the ministerial benches. Lord Grenville and Lord Erskine thundered against them from the benches of the opposition. From Lord Erskine came a set of resolutions declaring the orders to be contrary to the constitution, the laws, the rights of nations, and the Magna Charta. From the merchants of London, of Liverpool, of Manchester, came petitions praying for their repeal. The petitioners were heard by council, and Henry Brougham appeared in their behalf. But pamphlets, petitions, the embargo, the arguments of Brougham, and the votes of the Whigs, were alike vain. The orders were confirmed, the rates were fixed, and numbers of American ships then in England paid them. Thenceforth the Republicans never wearied of counting up the vast sums these taxes would have taken from American merchants had not the embargo put an end to trade.

It is not, they would say, very many years since the country rang with the patriotic cry, Millions for defence, but not a cent for tribute. But times have changed, and the very men who in 1798 would not pay a cent of tribute to France are only too ready in 1808 to pay millions of dollars in tribute to England. Take off the embargo, they cry. Let our ships go free. What harm has England done to us? What harm! Let us suppose their wishes granted. Let us suppose the embargo suspended and trade carried on under

the Berlin decree and the orders of 1807. Let us suppose an American ship sails from Virginia for Holland, France, Spain, Portugal, or Germany with, say, four hundred hogsheads of tobacco. She must go first to a British port and there ask leave to continue the voyage, and not only ask but pay for it at the rate of one and a half pence for each pound of the tobacco, and twelve shillings for each ton of the ship. Now, as a hogshead contains one thousand pounds of tobacco, the cargo will weigh four hundred thousand pounds, which, taxed at a penny and a half, will yield eleven thousand dollars. The ship will probably be of four hundred tons, which, at twelve shillings the ton, will add one thousand and sixty-five dollars more. Light money, lawyers' fees, pilotage, and a host of charges, will make eight hundred, and raise the grand total to twelve thousand nine hundred and sixty-five dollars. This paid, and a royal license secured at a cost of one hundred dollars, the captain may go on to, say, Amsterdam, where he may sell his tobacco and take on a cargo of gin. But on the way home, if the French do not seize him for having a British license, he must again touch at an English port and pay duty on the gin. The duty is a shilling and three pence per gallon. If he has six hundred pipes, or sixty thousand gallons, the tax will be sixteen thousand six hundred and fifty dollars. Tonnage and light money added to this will make the duty eighteen thousand five hundred and fifteen dollars. Thus, were it not for the embargo, every American ship that went out with tobacco and came back with gin would pay Great Britain thirty-one thousand dollars for leave to do so. About sixty-eight thousand hogsheads of tobacco are sent to Europe each year, in one hundred and seventy ships. Were the ships suffered to take them, American merchants would be forced to pay into the treasury of King George two millions three hundred and thirty-eight thousand dollars. On an ordinary cargo of flour the duty is nine thousand dollars; on an ordinary cargo of fish, four thousand dollars. And these duties are for leave to enter Amsterdam, or Rotterdam, or Brest, or Bordeaux. They are so many millions of tribute. They are blackmail exacted by Great Britain on precisely the same principles and with precisely the same right as a

few years since they were exacted by Tunis, by Tripoli, by Algiers.*

In France the embargo was actually made an excuse for a new decree worse than those of Berlin and Milan combined. The purpose of the embargo was to stop the departure of ships from ports of the United States; but it had not been very long in force when it proved far more efficacious in keeping them out. To captains of American ships in foreign waters the embargo left but one choice. They must come home and see their ships rot in some embargoed town while they sank slowly but surely into poverty and distress, or they must stay abroad, take out a British license, and, in strict obedience to the orders in council, carry on a hazardous but lucrative traffic. With scarce an exception, therefore, they stayed abroad, and, by means of forged papers, sought to evade the restrictions of the Berlin and Milan decrees. For a while all went well, for Napoleon was at Bayonne busy maturing his plans for pulling down the Bourbons from the throne of Spain and setting up his own family instead. So busy was he that he seemed for a time not to notice this new violation of his decrees. From the day when he signed the treaty of Tilsit and laid low the fourth European coalition, all the plans, all the movements, of Napoleon centred on Spain. In the early days of the coalition the Prince of Peace had been suffered to issue, in the name of Carlos IV, a proclamation declaring war and calling the Spanish people to arms. But this show of courage was short-lived. A week later the battle of Jena was fought; boldness gave way to consternation, and the proclamation was instantly recalled. Napoleon seemed to give it no heed. But he was not the man to forget and forgive, and Prussia and Russia disposed of, he turned his attention to Spain. His way of proceeding was characteristic. She was too feeble to conquer, for he had sacrificed her fleet at Trafalgar and had sent her army to the shores of the Baltic Sea. He determined, therefore, to take armed possession of her soil and frighten the King from his throne. For this an excuse was needed and quickly found. Portugal, the only

* Baltimore Evening Post, September 2 and 27, 1808.

neutral State on the ocean-front of Europe, save Denmark, was ordered to enforce the Berlin decree. The King so far obeyed as to shut his ports to the commerce of England, but refused to confiscate English goods. This was not enough, and, having announced to the Portuguese Minister, in the presence of a great assemblage of diplomats at Fontainebleau, that "the House of Braganza shall reign no more," he began the war. The duty of conducting the campaign was assigned to Junot, who crossed the frontier of Spain on October seventeenth and marched straight for Lisbon. Then the double purpose of Napoleon began to come out, for as Junot traversed Spain he took possession of Burgos, Valladolid, Salamanca, and Ciudad Rodrigo, established in each a French garrison, and put a French officer in command. Pushing on, Junot, on the last day of November, entered Lisbon to find Portugal without a ruler. The Prince Regent, unable to resist, had fled to his ships, and with the royal family and the Court had sailed for South America to found an empire in Brazil. Next day another army marching from Bayonne occupied Vittoria. In February, Barcelona was occupied, and orders issued for Murat to take possession of Madrid, while the French Admiral, Rosily, cut off the escape of the royal family by sea. The precaution was needless. Word of the intended flight got out. The populace of Madrid rose, sacked the house of Godoy at Aranjuez, and all but killed him. Cut off from flight, the old King abdicated, his son took the crown with the title of Ferdinand VII, and Murat entered Madrid as if to restore order.* From that hour Spain became a province of France. Hastening to Bayonne, Napoleon completed the work, swept Ferdinand aside, and on April seventeenth, at a moment when the ports of Europe were crowded with American ships, sent forth an order bidding the officers of the Custom-House of Spain, of Italy, of France, of the Hanse Towns, seize and hold every ship then in port, or that should come into port, flying the flag of the United States.† Armstrong at once

* Exposition of the Practices and Machinations which led to the Usurpation of the Crown of Spain, and the Means adopted by the Emperor of the French to carry it into Execution. By Don Pedro Cevallos. September, 1808.

† Armstrong to Madison, April 23 and 25, 1808.

demanded an explanation. But he was civilly told not to be alarmed. Nothing was further from the intention of the Emperor than annoyance to his good friends in America. The spirit they had shown in laying and enforcing the embargo had greatly pleased him, and to help them carry out their restrictions was the purpose of the Bayonne decree. The embargo made it unlawful for American ships to engage in foreign trade. Every vessel, therefore (and there were hundreds of them), which, with the American flag at its masthead, entered a port of France must either be English sailing under false colors, or American serving the British cause. Both alike deserved confiscation : the one for being an enemy in disguise, the other for violating the embargo and the Milan decree.

The explanation deceived no one. Indeed, the great body of Republicans wanted no explanation. By them the Bayonne decree was greatly liked. To carry to France or to Spain goods on which a duty had been paid to England was, in their language, a shameful surrender of American rights, a base payment of tribute to Great Britain. Every patriotic American ought to be deeply grateful to Napoleon for putting a stop to so infamous a traffic. By the Federalists the act was denounced as a high-handed outrage. The embargo, they argued, was an American law, and could have no force beyond the jurisdiction of the Congress of the United States. What right, then, had Napoleon to take upon himself to enforce American law against American citizens in France? He had none, and his plausible statement was a mask to hide a foul outrage on a friendly power. Under its cover he had robbed a neutral nation of more than two hundred and thirty ships. Had the confiscations been made in good faith, the ships would have been given over to the United States; they would not have been sold and the money thrown into the Treasury of France.

While the Federalists were clamoring their loudest, some of these ships were set free in a most unlooked-for manner. An event occurred which deeply affected the course of events in the United States, not only then, but for forty years thereafter. The old Spanish monarchy, once the glory and the

terror, then the contempt, of all Europe, ceased to exist, and, on June fifteenth, at Bayonne, Napoleon crowned his brother Joseph King of Spain. As he passed from Bayonne to Madrid, Joseph saw only too plainly that he was a king without a country; a ruler without a people over whom to rule. All Spain was in revolt against him. On May second, at Madrid, the populace had turned on their conquerors, had attacked them, and had been quickly put down by Murat. But the affair was no common riot, no street brawl; it was part of a great and patriotic uprising of the people. Ill-led, undisciplined, half armed, they drove the invaders from their soil and inflicted on Napoleon such reverses as he had never known. To them twenty thousand French troops laid down their arms in Sierra Morena. To them the French fleet surrendered at Cadiz. Joseph fled from Madrid. Arthur Wellesley landed near Lisbon, defeated Junot at Viemieiro, and forced him to quit Portugal and return to France. A band of patriots assumed the government of Spain and liberated every American ship seized in Spanish ports under the Bayonne decree.

News of the revolt was greeted in England with transports of delight, and the orders in council repealed as to Spain. News of the liberation of the ships and the repeal of the orders was heard in New England early in August, and at once acted on. In Boston the merchants called a town-meeting, voted an address to the President, and appointed the select-men a committee to lay the proceedings before the towns of Massachusetts and ask for their approval. The address called on the President to suspend the embargo, at least with respect to Portugal and Spain.*

To the mortification of the Federalists, the select-men of Salem wrote back that the embargo was a wise measure; that the President would suspend it the very moment he could do so with safety, and refused to call a town-meeting. The select-men of Worcester replied that as ten freeholders had not demanded a town meeting, they believed the sentiment of the people was against it, and they too refused. At Lynn the people met, but met to pronounce it "inexpedient and

* Boston Gazette, August 11, 1808.

unpatriotic" to ask for a repeal at the present crisis. At Pittstown, in the district of Maine, the people voted that such an address as the Boston men wanted might be viewed as acquiescing in the oppressive decrees and was "improper." Elsewhere they were more successful, and from New Bedford, from Augusta, from Belfast, from Douglas, from Plymouth, from Newburyport and Provincetown, from Wells and Bolton, from Sterling and Somerset, Taunton and Duxbury, addresses were sent to the President.* To have answered these appeals one by one would have been a great waste of time. A general reply was all that was needed, and, selecting the Boston memorial as coming from the chief city of New England and as expressing the sentiments common to merchant traders everywhere, Jefferson replied.

The resolutions and the answers were still the subject of angry dispute when the time came to choose electors of President and Vice-President. The campaign had opened with the year, and was attended by what threatened to be a serious schism in the Republican party. That Madison was the choice of the great body of Republican voters was well known. But Monroe had returned from London in the middle of December, 1807, and, supported by the influence of John Randolph and the quids, was to be brought forward as the rival of Madison. Both were Virginians, both were old-time Republicans, both were exceedingly popular in their own State, and, what was worse, Monroe had a strong following of discontented Republicans in New York. It was, moreover, believed that the rejection of his English treaty had made him a favorite with many Federalists. To give him time to develop this strength was not the intention of the friends of Madison, and they decided to nominate their candidate at once. That Virginia might not appear to be doubtful as to which of the two was her favorite son, it was determined to begin with her, and, as the Legislature was in session, the members were summoned to meet in caucus on the nineteenth of January, 1808, and express their wishes. One hundred and twenty-three attended and chose electors pledged to Madison. But the friends of

* Boston Gazette, August 25, 1808. Aurora, September 28, 1808.

Monroe were not overawed, and fifty-seven members of the Legislature met and nominated electors pledged to him. And now the contest was transferred to Washington, where, on the nineteenth of January, the Republican senators and representatives were invited to meet in caucus on the evening of the twenty-third. That the appearance of regularity and harmony might be kept up, the call was issued by Stephen Roe Bradley, of Vermont. Bradley had been chairman of the caucus which, in 1804, had formally renominated Jefferson. By virtue of the authority thus vested in him, the circular set forth, he now deemed it fitting to call another caucus to select candidates for the offices of President and Vice-President of the United States. But the opposition was ready, and, as the representatives entered their room one morning, they beheld two papers pinned on the curtain near the Speaker's chair. One was the printed circular of Bradley, the other was a written answer by Josiah Masters, a member from New York. By virtue of a power vested in him, similar to that assumed by Bradley, contrary to the true principles of the Constitution, he deemed it fitting not to call the caucus; not to nominate candidates for the offices of President and Vice-President; and to ask that no one attend to aid in violating one of the most important principles of the Constitution.

This attack of Masters was immediately followed by another from Edwin Gray, a representative from Virginia. In an open letter which he gave to the press he denounced the usurpation of power, the mandatory style of the call, and the purpose of the meeting; and declared that he for one could not countenance by his presence the midnight intrigues of any set of men who took to themselves a power which belonged to the whole people of the United States, and to them alone. The effect of these attacks was to make Mr. Bradley and his friends more active and more determined than ever. Timid Republicans were commanded to be present. Men of a sterner mould were persuaded. On doubtful Republicans were brought to bear all manner of arguments. During two days nothing was talked of but the caucus, the men who would attend, and what the men who attended would do. On the rolls of the House and Senate stood one hundred and seventy-nine names. Of

these, one hundred and thirty-nine belonged to men who, whatever they might think of Jefferson and his terrapin war; who, whether they upheld the administration or withstood the administration, would have denied with vehemence that they were anything else than steady and unflinching Republicans. Yet so great was the dislike for the caucus system that, when Saturday evening came, but eighty-nine were present in the Senate chamber. By these James Madison was nominated for the Presidency, George Clinton for the Vice-Presidency, and a short address put forth in justification. Each man, the people were assured, acted for himself as a citizen, not as a congressman. Necessity, not choice, was the reason for calling a caucus. Can any Republican, it was asked, recall the perils threatening us at home and abroad, and doubt the need of union? Is anything more likely to bring about union than the choice of a character acceptable to Republicans in every section of the country? And where is such a character likely to be chosen? In the Legislature of a particular State? In the electoral colleges of seventeen States? Or in the meeting of the delegates representing the wishes and the votes of the Republicans of seventeen States?

The answer of the anti-caucus men to this reasoning was set forth in a paper which, bearing the signatures of seventeen Republicans, was issued as an address to the people. Whether they considered the call for the caucus, or the behavior of the caucus they found, they declared the same cause for alarm. The notices had been private, and had been sent to the delegates from the Territories; to men who could not cast a vote in the Congress, and who had neither part nor lot in the choice of a President. Once gathered, these men had gone on, without discussion and without debate, to nominate for President a man most unfit for the place; had then published their act as the act of the Republican party; had sought to impress on the people the belief that it ought to be binding on all Republicans, and had denounced as an apostate every Republican who would not approve their candidate and their doings. All this was hostile to the spirit and plain intent of the Constitution. That instrument made it the duty of the States to choose electors, and the duty of the electors to choose a Presi-

dent. To pick out one man as the only candidate, and bind every Republican elector to vote for him and no one else, is to strip the electors of all power of choosing; is a plain violation of the Constitution; is a gross assumption of power not delegated by the people to any set of men.

But the man is as objectionable as the way in which he was chosen. The aspect of our foreign affairs is far from promising. We are perhaps on the eve of war with a great maritime power. At such a time, if it be the duty of Republicans to agree on one man, that man ought surely to be noted for firmness, for energy, for long public service faithfully discharged. Is Mr. Madison such a man? We ask for energy and are told of his moderation. We ask for talent and are told of his unassuming modesty. We ask for public service and are told of the "Federalist."

Mr. Madison, was the answer, is such a man. Has he not been chosen by a convention of Republicans? Has not the choice been unanimously approved by the Legislature of Kentucky? Have not a great majority of the members of the Legislature of Virginia been loud in their approval? Have not the Republican members of the Legislature of Delaware declared for him? Have not scores of meetings of citizens all over the country voted him the one Republican fit to carry on the good work begun by Thomas Jefferson? And what, it was asked by the Federal writers, is the good work? Turning Americans out of office to put foreigners in. Building gun-boats, mending the Constitution, insulting England, paying tribute to France, laying embargoes and wiping American commerce from the sea. Was this the sort of work the people wished to go on?

As the spring election returns came in, it seemed as if the Republicans were doomed. In April, Massachusetts went back to Federalism and turned Adams out of the Senate. In May, at the elections in New York, the Federalists made great gains. In June the prospect was so dark that even Gallatin lost heart, and expected to see the Republicans turned out on March fourth.* In July he was sure of it. Vermont he

* Gallatin to Mrs. Gallatin, June 29, 1808. Adams Gallatin, p. 373.

considered as lost. New Hampshire was hopeless. Pennsylvania was in great doubt.* In August the only States he felt sure of were Virginia, South Carolina, and those in the West.† But now the tide turned. No Federal candidate had as yet been nominated, for the leaders of that party had been vainly striving to persuade De Witt Clinton to join with them in supporting his uncle, George Clinton, for President. This in August he finally refused to do. The Federalists were then forced to name candidates of their own; selected Charles C. Pinckney and Rufus King, and lost the State of New York. Had electors been chosen by popular vote on a general ticket, it cannot be doubted that the day would have gone against Madison. Happily for him, the custom of choosing electors by the Legislatures, then so general, saved him, for many of those bodies had been elected before the effects of the embargo were seriously felt. As it was, the great change which had taken place in the feelings of the people was most apparent. On the February morning, 1805, when the electoral votes were counted before Congress, but fourteen, cast by three States, were given to the Federalist candidates. On the February morning, 1809, when a like ceremony was performed, forty-seven votes, cast by seven States, were counted for Pinckney and King. In some States the old majority for Jefferson had been reduced. In three there was no majority at all. In three more the vote was divided. Six electors in New York refused to vote for Madison. Vermont, recollecting her ancient feud with New York, would not give one vote for Governor Clinton. North Carolina, which in 1804 cast fourteen votes for Jefferson, now gave three for Pinckney and King.

Just at the time when these elections were about to take place ‡ Congress met and matters came to a crisis. The Republican majority was immense. But it was unorganized, distracted, without a guide. Never in the history of our country was there a moment when the controlling hand of an executive was needed more. But the Executive, as on another occasion in his career, was not equal to the emergency. He

* Gallatin to Mrs. Gallatin, July 8, 1808. Adams's Gallatin, p. 373.

† Gallatin to Jefferson, August 6, 1808. Adams's Gallatin, p. 373.

‡ Presidential electors were not then chosen in all the States on the same day.

knew the embargo had failed. He knew that his own party would not longer support it. He knew his stanchest friends would not listen to his advice, and that even Virginia had turned from him. He was cowed, and, positively refusing to mark out a policy or suggest a course of action, he surrendered his trust, neglected his duty, and threw all responsibility on the man about to become his successor. He did not think it right, he said, to propose measures Madison would have to carry out.* True to this sentiment, he said not a word in his annual message regarding the embargo. He was content to sum up our relations with France, with Great Britain, Spain, the Barbary Powers, and the Indians, and to tell what had been done toward increasing the militia toward putting up forts along the coast, toward manufacturing guns, toward building up a navy, and cutting down the public debt. One hundred and three gun-boats had been built during the year, nearly eighteen millions of revenue had been collected, more than two millions of the debt cancelled, and more was to be cancelled on the first of January. Yet even when this was paid a large surplus would remain. What should be done with this annual surplus was, he thought, well worthy of consideration. Should it lie idle in the treasury vaults? Should the revenue be reduced? Should it not rather be laid out in roads, canals, rivers, and education? If Congress did not possess the power, then that power could be had by such an amendment to the Constitution as the States would approve. Confounded by his silence on the subject of embargo, the House sent so much of the message as related to foreign affairs to a committee with George Washington Campbell, of Tennessee, as chairman. Campbell turned to Madison. Madison it is likely turned to Gallatin, who in their joint name called on Jefferson to summon the Cabinet and decide on a definite course of action.† But he would not, and Gallatin in despair wrote out a document which the committee presented and which is yet known as "Campbell Report."

While Gallatin was busy preparing it, the perplexity which

* Jefferson to Logan, December 27, 1808. Jefferson's Writings, vol. v, p. 404.
† Gallatin to Jefferson, November 15, 1808.

afflicted the Cabinet was yet more finely displayed in the House. Member after member rose and presented resolutions of a most contradictory kind. Chittenden, of Vermont, demanded a prompt repeal of the embargo. Eppes, of Virginia, was for non-intercourse with Great Britain and France, and for arming and equipping more militia. Elliot, of Vermont, called for all instructions issued to revenue collectors regarding the execution of the laws. Another member demanded the names and places of residence of those who had evaded the embargo laws; another wanted a list of all orders, all decrees, and proclamations affecting the commercial rights of neutrals, issued by France and England since seventeen hundred and ninety-one. There were motions to forbid vessels to go from port to port along the coast unless owned and manned by citizens of the United States, and motions to suffer merchants to arm their ships and send them to countries not subject to the decrees and orders of Great Britain and France. Such resolutions were promptly sent to the Committee of the Whole. But whenever the motion was made to go into the Committee of the Whole to consider them it was voted down. The Republicans were quietly determined that nothing should be done till the committee appointed to consider so much of the message as related to foreign affairs had reported.

On November twenty-second Campbell's report was heard. It began with an examination of the reasons given for issuing the decrees and orders in council, went over the history of each restriction, protested that the United States must either fight, submit, or go on with the embargo, and ended by offering three resolutions. One set forth that the United States could not submit to the edicts of Great Britain and France; another, that it would be well to shut out from the ports of the United States the ships, goods, and merchandise of France, England, and any power obeying the decrees violating the lawful commerce and neutral rights of the United States. The third declared that the country ought to be at once put in a more complete state of defence.

Six days later Campbell called up the first of these resolutions in the Committee of the Whole, and the debate began. Josiah Quincy led on the attack of the New England men;

John Randolph spoke for the discontended Republicans; Campbell defended the resolutions, and was supported by the shameful confessions of the Republicans that they were afraid to go to war. The decrees and orders had done their work, and the whole South for the moment was cowed into submission. From Jackson, of Virginia; from Willis Alston and Nathaniel Macon, of North Carolina; from David Williams, of South Carolina; from George Troup, of Georgia; from Richard Johnson, of Kentucky, came language such as had rarely been heard in the halls of Congress. Meet the navy of Great Britain on the sea! exclaimed one. The very idea of such resistance is too idle to merit consideration.* If we have war, said another, our towns will share the fate of Copenhagen.† Arming our merchant ships, observed a third, is the same thing as declaring war; and are we ready to plunge naked and unarmed into a war for the gratification of a few bankrupt commercial speculators?‡

During five days the debate went rambling on before the first resolution passed the committee unanimously. The Chairman then left his seat, took his stand before the Speaker, reported what had been done, and the resolution came up in the House. A new threshing of the old straw followed. The Berlin decree, the Milan decree, the orders in council, the killing of Pierce, the attack on the Chesapeake, the constitutionality of the embargo laws, the conduct of New England, the hissing at the London Tavern when Sir Francis Baring proposed the toast, The President of the United States, the charge of British influence, the charge of French influence, the burning of Copenhagen, the Spirit of Seventy-six, the rush of speculators into the market to buy up salt, dry-goods, molasses, sugar, the moment the embargo was laid—were dwelt upon over and over again. Never had there been heard in the House a debate so wandering, so confused, so full of repeti-

* Willis Alston, Jr., Annals of Congress, 1808–1809, November 29, 1808, p. 556.

† John G. Jackson, Annals of Congress, 1808–1809, December 2, 1808, p. 657.

‡ George M. Troup, Annals of Congress, 1808–1809, November 30, 1808, p. 606.

tion. Rarely had there ever been one so long. That on the British treaty of 1794 was ended in eighteen days. That on the repeal of the Judiciary Act ran on for one month. That on the twelfth amendment took up parts of eleven days. But that on Campbell's report was not finished at sunrise of the twentieth day. The previous question was then unknown to the House of Representatives, and it was only by sitting all Saturday night and well into Sunday that a vote was forced on the second and third resolutions. The first had already passed with but two dissenting votes; the third passed without any; but when the roll was called for the vote on the second, eighty-four answered yea and thirty nay.

That the wishes and policy of the coming administration might not be misunderstood, Gallatin followed up the Campbell report with another in which he spoke more plainly still. As Secretary of the Treasury it became his duty to submit each year to Congress a statement of receipts and expenses. In making this in 1808 he took occasion to call for war. There would be, he said, on January first, 1809, in the treasury, in some form, sixteen millions of dollars. The expenses for that year would be thirteen millions, leaving a surplus of three millions to defray the outlay incident to preparation for war. What measures should be taken to provide funds for the ensuing years depended on what course was pursued toward the belligerents of Europe.

The meaning of this was that the incoming administration was ready for war, and that, if Congress would give it power to borrow, the fighting should be done without laying an internal tax of any kind whatsoever. In private the secretaries were more outspoken still, and before the end of December their friends were writing home that a plan had been arranged; that the embargo was to be partially raised; that a Non-intercourse Act was to be passed, to take effect on June first; and that meantime warlike preparations should go on.

In forming this plan, both Madison and Gallatin were strongly influenced by David Montague Erskine. If the trouble was ever to be settled peaceably, the hour, he thought, for such a settlement had come. The change in the adminis-

tration afforded each party a fair opportunity to make concessions, to offer explanations, to recede from embarrassing positions; and a few concessions were all that were needed. In order to determine if the United States would make her share, he went, as soon as the election was over, to the men who would form the next administration, held long conversations with them, and reported what he heard to Canning. By Madison he was given to understand that the alternatives were embargo or war; but the country was fast coming to the belief that embargo was too passive, and that nothing but the difficulty of contending with France and England at the same time deterred them from going to war. What Gallatin told him he quite misunderstood. The Secretary of the Treasury he represents as opposed to the embargo at first, but, now that it was on, ready to continue it for a short time longer before taking up arms. He represents him as drawing a comparison between the outgoing and the incoming President; as saying that, while Jefferson hated England, Madison bore her no ill-will, and leaving it to be inferred that, in consequence of this difference of feeling, many things might be brought about under the rule of the new President which could not have been accomplished under the old. As for himself, Gallatin would gladly see every kind of commercial restriction done away with. Nor was he alone in this wish; even Congress shared it. England had complained that British goods and British ships of war were shut from American ports; but Erskine must have observed that the Committee on Foreign Relations had recommended that the importation of French goods should be forbidden and the ports shut to the war-ships of every belligerent. Did this look like partiality for France? Great Britain had complained that subjects of the King were serving in American ships. Erskine must have noticed that it was now proposed to exclude all foreign seamen from American ships. Great Britain had complained of the trade with the French colonies; but he could say, and say with safety, that the new administration intended to give up all claim to a colonial trade in time of war which it did not have in time of peace. All these communications, Erskine assured Canning, were made by Gallatin with a sincere desire that

they might produce peace.* Long afterward, when the letters were given to the world, Gallatin declared he had been cruelly misrepresented, denied that he had in 1807 wished for measures more vigorous than the embargo, denied that he had ever represented Jefferson as hating England and loving France, or the United States as ready to concede the Rule of 1756.†

What he did wish to accomplish, and what he and his friends undertook to carry out, was to continue the embargo till after the close of Jefferson's term, secure a Non-importation Act against both belligerents, but to be suspended in favor of whichever one would first repeal her commercial restrictions, and, in the event of failure to secure such a repeal, a special session of Congress and war. The first step toward this end was taken when he wrote the report for Campbell. Another was taken when in his own annual report he labored to remove all fear of the cost of war; a third when he sought to persuade Erskine to frighten Canning into concessions by threats of war; a fourth when he asked the chairman of the Senate Committee for a Force Act.‡ Had he hated the embargo with all the fervor of a New England town-meeting and been as bent on overthrowing it as Pickering or Quincy, he could not have chosen a better instrument of destruction than the bill which on the eighth of December was presented to the Senate by Giles, and on the twenty-second of December was sent by the Senate to the House. The twenty-second was the anniversary of the laying of the embargo, and this day the New England Federalists had set apart as one of general mourning. At Salem the seamen met at sunrise on the old North Bridge, where the British regulars had once been stopped, and fired minute guns for half an hour. The ships in the harbor of Beverly displayed their flags at half-mast, while the crews marched about the streets to dismal music. At Providence the flag on the great bridge flapped at half-mast all day. At Boston the ships were shrouded in mourning. That the ballad-mongers and popular poets should be silent at

* Erskine to Canning, December 3 and December 4, 1808.

† Gallatin to the editor of the National Intelligencer, April 21, 1810.

‡ Gallatin to William B. Giles, November 24, 1808.

a time when the feelings of the people were so deeply stirred was impossible. They sent forth hundreds of verses, some of which were sung at the meetings on Embargo Day, on Washington's Birthday, and on the fourth of March, and almost all of which were instantly forgotten.* One, however, has been

* A few specimens will suffice. At Portland, on Embargo Day, the people sung a song entitled The Terrapin Era:

"Teach us the measure of our wrongs,
Ye, who embargoes frame;
Our hearts are tuned to mournful songs;
Nor help, nor hope remain.
. . . . . .
"What shall we sailors wait for then?
Seek bread abroad we must;
Strangers won't let us seek in vain,
Nor disappoint our trust."

At Salem, on Washington's Birthday, the song was more cheerful:

I.

"Oh, dear, what can the matter be?
Dear, dear, what can the matter be?
Oh, dear, what can the matter be?
Th' Embargo's so long coming off.
It promised to make great Bonaparte humble,
It promised John Bull from his woolsack to tumble,
And not to leave either a mouthful to mumble,
At our nod to make their caps doff.

II.

"Oh, dear, what can the matter be?
Dear, dear, what can the matter be?
Oh, dear, what can the matter be?
Th' Embargo don't answer its end.
The PEOPLE are left in the dark yet to stumble,
Their patience worn out, no wonder they grumble,
While daily they see their prosperity crumble,
And no hope their condition to mend."

Still another was set to the music of Highland Daddy:

I.

"Oh, whither, I pray, is our Highland Daddy bound?
Oh, whither, I pray, is our Highland Daddy bound?
He's bound to his plantation with fifty thousand pound,
With a gun-boat embargo'd to plough his native ground.
. . . . . .

rescued from oblivion by the later fame of its author, for the hand that wrote it wrote also "Thanatopsis" and "The Flood of Years." *

To the Republicans the day was one of rejoicing. In many towns bands of them dined together and drank confusion to Federal men and Federal measures and long life to Jefferson and General Embargo. The great majority which the measure commanded in Congress, the strong resolutions of approval passed by the Legislatures of eight States, their success in the fall elections, had turned their heads. In their joy they pronounced the embargo the settled policy of the country, and called loudly for more stringent laws and a strict enforcement. Unhappily, they were heard, and on the fifth of January, after a stormy sitting which lasted till six in the morning, the House passed the Force Act.

The first section made it a high misdemeanor to carry or seek to carry specie, goods, wares, or merchandise out of the United States in any way whatever. The second declared it unlawful to load specie, goods, wares, merchandise, whether grown at home or made abroad, into any kind of water-craft till leave to do so had been granted by a collector. Even then the lading must be done before the eyes of an inspector, and a bond of six times the value of ship and cargo given not to sail without a clearance. The fourth named the grounds on which leave to land could be given to craft sailing the lakes

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II.

"Oh, what will he do with his philosophic fogs?
Oh, what will he do with his philosophic fogs?
He'll discover more salt mountains, he'll breed more hornèd frogs,
He'll improve his whirling chair and call woodchucks prairie dogs."

* The Embargo; or, Sketches of the Times. A Satire. By William Cullen Bryant, 1808. Even Mr. Bryant has his fling at the "philosophic" taste of Jefferson.

. . . . . .

"Go, wretch! resign the Presidential chair,
Disclose thy secret measures, foul or fair;
Go, search with curious eye for hornèd frogs
'Mid the wild wastes of Louisiana bogs:
Or where Ohio rolls his turbid stream
Dig for huge bones, thy glory and thy theme."

and rivers, bays, sounds, and harbors of the country, and fixed their bond at three hundred dollars the ton. The ninth bestowed most extraordinary powers on the Collector. Should he find on any water-craft specie, or goods of home make or growth, he was to seize them. Should he find them in a wagon, in a cart, in a sleigh, going toward the seaboard or the boundary line, he was likewise to seize and hold them till bonds were given not to take them out of the United States. The tenth declared that the powers given to the Collector by the ninth were to be used in strict obedience to such rules and orders as the President might issue. If suit were brought against the Collector and judgment entered for the plaintiff, he might have his goods again by giving bonds. The eleventh authorized the President to use so much of the army as he saw fit for the purpose of enforcing the act on land. The thirteenth gave him power to hire, arm, and equip thirty vessels to be used in enforcing the law off the coast.

Since the Alien and Sedition Bills no Act so infamous had ever been passed by an American Congress. While still before the House, threatenings and murmurings of discontent had been heard in every seaport town north of the capes of Virginia. But the moment it was known that the act was really law; that every lad who went out for a day's fishing might have his boat stopped and his lunch-bag searched by any collector who hated his father; that any farmer who despised Frenchmen, Democrats, Jefferson, gun-boats, and dry-docks, who called the embargo a Chinese measure, and was loud in condemning the Terrapin war, might be stopped in the highway and his wagon-load of grain seized by some spiteful Republican collector; that ships could be boarded, desks broken open, and specie, the hoardings of the captain, carried off by men eager to share it with the Secretary of the Treasury; that the coast was to be blockaded, and public meetings broken up by armed troops, the moment this was known, all New England was in rebellion.

The Federal newspapers in which the law was published appeared with inverted column-rules.* There were long

* Boston Gazette, January 19, 1809. New England Palladium, January 17, 1809.

obituary notices on liberty, on the Constitution, on the Union. Handbills were circulated far and wide. One, called "The Constitution Gone," has been preserved for us, and well expresses the feelings of the hour. Had such an act as that to enforce the embargo reached New England in 1776, the whole people, the writer declared, would have risen up in rebellion. But so effectually had the Tory doctrines of passive obedience and non-resistance been preached of late, that the people, like well-tamed cattle, bent their necks to the yoke. This law, said he, deprives you of the inalienable rights of acquiring property, of enjoying it as you wish, and disposing of it at your pleasure, of trial by jury, and of the right of resort to the State judiciary. This law subjects you to domiciliary visits, to the seizure of property without legal process, quarters soldiers on you in time of peace, and gives strangers the right to open and read your secret and confidential papers. Your coasting trade is gone; the military is above the civil power, and you have nothing left but civil war or slavery. Such appeals were hardly needed, for organized opposition began weeks before. While the bill was still before the House the people of Bath, in Maine, assembled in town-meeting and took the first steps toward civil war. They called on the General Court to relieve them at once, and named a Committee of Correspondence to ask for like action in neighboring towns, and a Committee of Safety to warn the men of Bath of any attempt to enforce the embargo.* So much in earnest were they that a ship was armed, loaded with produce, and the captain ordered by the people to sail. The Collector, knowing what was coming, hired a vessel, put some six-pounders on the deck, gathered a volunteer crew, and dropped down the river to await her in Quaheag Bay. Undismayed, the sloop came on, exchanged shots, and went to sea.†

The fishermen of Gloucester were next to act, and by them like resolutions and addresses were voted and like committees

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* The meeting was held December 27, 1808. New England Palladium, January 3, 1809. Boston Gazette, January 5, 1809.

† Boston Gazette, January 9, 1809.

chosen.* The citizens of Hampshire County declared that events were constantly happening which tended to break up the Union, and demanded that such things stop.† The men of Newburyport voted that they would not aid or assist in executing the Force Act; that all who did were violators of the Constitution, and that the whole system was unequal, oppressive, unconstitutional, and unjust.‡ In towns where in September the Federalists could not find ten men to demand that the select-men should warn a town-meeting, they had no trouble in January in finding a hundred. From Augusta, from Belfast, from Castine, from Alfred, from Bath, from Portland, from Wells, from Hallowell, from Beverly and Salem, Newburyport and Gloucester, from Boston and Cambridge, Hadley, Brewster, Sanford, Northampton, North Yarmouth, Amesbury, Oxford, New Bedford, Provincetown, Plymouth, from Marblehead, Duxbury, Somerset, Taunton, Lynn, Bolton, and Sterling, from a hundred towns, resolutions came pouring in upon the General Court. The spirit of them all was British. Each complained of the hostile attitude of the administration toward Great Britain and of the "cringing sycophancy" of its conduct toward France. Each declared the purpose of Jefferson to be the provocation of an English war. Each deprecated a dissolution of the Union, but none expressed horror at the idea; not a trace of national feeling exists in one of them. Gloucester thought that a dissolution of the Union ought not to be resorted to till all honorable means for redress had been tried.# The men of Alfred told the Republicans that nothing but "a fearful looking for of despotism could induce" them to wish for a severance of the Union, but that despotism had broken the bonds that once bound the colonies to Great Britain, and that what a like course of conduct might do in the United States God only knew.‖ Hadley expressed the belief that a perseverance in

* Meeting held January 12, 1809. New England Palladium, January 17, 1809.

† New England Palladium, January 20, 1809.

‡ Boston Gazette, January 26, 1809.

New England Palladium, February 24, 1809.

‖ New England Palladium, February 17, 1809.

that deadly hostility to commerce which arose from jealousy of New England would soon break up the Union—nay, that self-preservation would soon force a separation of the States.* The language used by Hallowell sounded strangely like that which, ten years before, had been used by Jefferson and Madison in their rebellion against the Alien and Sedition Laws. The object of men in forming a body-politic, said the resolution, is the safety and security of persons and property; but, in giving up some natural rights men do so in order to protect those retained and guaranteed by the social compact. Whenever, therefore, those delegated to make laws transgress this rule and exceed the powers given them by a fair construction of the instrument whence they derive their delegated powers, such laws are null; the Embargo and Force Act are unwarranted by the spirit and letter of the Constitution, are null, and the State is in duty bound to interfere and arrest the career of usurpation.

So hateful was the law that, rather than execute it, the Collector and the Deputy Collector of the port of Boston resigned. An order was thereupon issued that not a vessel of any sort should be allowed to pass Fort Independence.†

In the midst of this outburst of popular fury the General Court met at Boston. The memorials sent up by the towns were at once referred to a joint committee, and a long report, a set of resolutions, and a bill were promptly presented. The bill began with the assertion that the fourteenth article of the Declaration of Rights in the Constitution of Massachusetts, and the fourth article of the amendments to the Constitution of the United States, guaranteed that citizens should be secure in their persons, in their houses, in their papers and effects, against unreasonable search; that no warrant should issue unsupported by oath; and that every place to be searched and every article to be seized should be particularly described in the warrant. Any person, therefore, who, acting under the Force Act, entered by day or by night the house of a citizen of Massachusetts against that citizen's will and, without a war-

* Baltimore Evening Post, January 9, 1809.

† New England Palladium, February 3, 1809.

rant duly supported by oath, searched for specie or for articles of domestic growth, produce, or manufacture, was guilty of a high misdemeanor, and, on conviction, might be punished with fine or imprisonment.* The bill passed, but the Governor promptly vetoed it. The resolutions were four in number. One declared the Force Act to be unjust, unconstitutional, oppressive, and not legally binding on the citizens of the Commonwealth, but urged all persons aggrieved to abstain from forcible resistance. Another recommended a memorial to Congress. The third announced that Massachusetts was ready "to co-operate with any of the other States in all legal and constitutional measures for procuring such amendments to the Constitution of the United States as shall be judged necessary." By the fourth the President of the Senate and the Speaker of the House were instructed to send copies of the resolutions to the sister States.† Thus was a call for a convention of New England States put forth formally; thus was the earnest and long-desired wish of Pickering attained. Indeed, that the invitation went forth when it did is to be ascribed, and ascribed solely, to the work of Pickering and his friend. No memorial had asked for such a convention, no town-meeting for a moment thought of seeking help beyond the General Court; but the scheme for a New England confederacy, which the defeat of Burr and the death of Hamilton compelled the plotters to lay aside in 1804, was revived with new energy in 1808. Late in the winter of that year, on the eve of the General Court elections, Pickering, it will be remembered, addressed a long letter to the Governor of the State. It was intended to be laid before the Legislature, but Sullivan refused to transmit it, and a copy was thereupon given to the press. In that letter, the plan discussed in 1804 in private was for the first time made public and the people warned that "those States whose farms are on the ocean and whose harvests are gathered in every sea should immediately and seriously consider how to preserve them," and assured "that noth-

* The Patriotic Proceedings of the Legislature of Massachusetts during the Session from January 26 to March 4, 1809. Also Gazette of the United States, February 7, 1809.

† The Patriotic Proceedings of the Legislature of Massachusetts.

ing but the sense of the commercial States, clearly and emphatically expressed," could save them.* To this doctrine the embargo made many converts, and, as the day for the meeting of the General Court drew near, men who could never before be persuaded to listen to the scheme began to urge its speedy execution and to ask for information as to the best way to carry it out. Harrison Gray Otis was then President of the Massachusetts Senate, yet he was not ashamed to write for instructions to Washington, to suggest a meeting of the commercial States at Hartford, and to urge Josiah Quincy to find out if Connecticut and New York would attend and what should be the purpose of the meeting.† Christopher Gore wrote in like strain to Pickering.‡ The answer Pickering sent back laid down precisely what should be done.# A convention of New England States should be called, delegates appointed, and an address made to the people. Before the General Court rose the plan was carried out almost to the letter. No delegates, indeed, were chosen, but the address was made to the people and the invitation voted by the Senate.

What Connecticut would do was soon manifest. Dearborn, acting under orders from the President, addressed a circular letter to the governors of the States asking them to name in or near each port of entry some officer of the militia having "known respect for the laws" on whom the collectors could call for help. Many of the governors complied readily. But the Governor of Connecticut was Jonathan Trumbull, who flatly refused to obey. He knew, he wrote in reply, of no authority for making such appointments, and he promptly assembled the Legislature, and addressed it in the language of the Virginia Resolutions of 1798. When, said he, the National

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* A Letter from the Hon. Timothy Pickering, a Senator of the United States from the State of Massachusetts, exhibiting to his Constituents a View of the Imminent Danger of an Unnecessary and Ruinous War, addressed to His Excellency, James Sullivan, Governor of the said State. Boston, 1808, pp. 11, 12.

† Harrison Gray Otis to Josiah Quincy, December 15, 1808. Life of Quincy, by Quincy, p. 164.

‡ Christopher Gore to Timothy Pickering, December 20, 1808. Adams's New England Federalism, p. 375.

Timothy Pickering to Christopher Gore, January 8, 1809. Adams's New England Federalism, p. 376.

Legislature oversteps the bounds prescribed by the Constitution, it becomes the duty of the States to interpose and protect the rights of the people from the assumed powers of Congress. His refusal to afford military aid was severely felt, for it was now apparent that, if the embargo was to be enforced, it must be enforced with the bayonet. In town after town in New England acts of violence took place. At Plymouth a schooner laden with seven hundred quintals of dry codfish defied the Collector and put to sea.* The Wasp captured her off Race Point and sent her into Provincetown on Cape Cod. There forty men, disguised as Indians, boarded her, put the crew of the Wasp on shore, and again she went to sea.† At Providence, the Custom-House authorities having seized a schooner, the sailors loudly declared they would set her free. The Governor, in obedience to the Force Act, called out four companies of militia. They met, but met only to assert their hatred of the Force Act and their determination not to serve. Emboldened by this, some three hundred men gathered at the wharf, took the sloop, bent her sails, cut a way through the ice, and sent her to sea. ‡ For obeying the circular order of the President and detaching the militia, Lincoln was censured by the Legislature, and his acts declared irregular, illegal, and inconsistent with the principles of the Constitution. At New Haven the people in town-meeting voted that the enormous bonds required by sections two and four of the Force Act, the powers bestowed on collectors by section nine, and on the President by section eleven, violated the constitutional guarantees that excessive bonds should not be required, that excessive fines should not be imposed, and that the people should be secure in their persons and papers, and called for a meeting of the General Court.#

Not content with appeals to their legislatures, the people had also memorialized Congress. All through January petitions came in day after day from towns in New Hampshire and Massachusetts, from the counties of Dutchess and Suffolk

* Boston Gazette, January 5, 1809.

† Boston Gazette, January 12, 1809.

‡ Gazette of the United States, January 28, 1809.

Gazette of the United States, February 7, 1809.

and Ontario in the State of New York, from the city of Albany, from three wards in the city of New York, and from the county of Westmoreland in Pennsylvania. The language was much the same in each. As a measure of coercion, the embargo was pronounced a failure; as a commercial restriction, it was unnecessary and ruinous; as a law, the act to enforce it was oppressive, tyrannical and unconstitutional, and ought to be repealed.

Made bold by this show of popular wrath, the Federal representatives determined to attack the embargo once more, and, before the month ended, formally moved the repeal. The motion laid down two separate propositions: that provisions ought to be made by law for repealing the embargo laws before a certain day of a certain month; and that American citizens ought to be suffered to fit out privateers to prey on the commerce of England and France. But the Republicans divided the motion, and the debate began on the question, What shall be the day and what shall be the month for repealing the embargo? Three dates were moved. Some were for June first; some for March fourth; some for February fifteenth, 1809. Those who urged the fifteenth of February as the day declared that they did so because, in their opinion, if the embargo came off at all, it ought to come off at once. Every honest merchant and farmer had undoubtedly been a great sufferer by the laying of the restriction. Every honest merchant and farmer ought, therefore, to be benefited as much as possible by lifting the restriction, and he would be much benefited by lifting it at once. For months past the embargo-breakers had been hurrying wagon-loads and boat-loads and sleigh-loads of produce over the border to Canada. This had been paid for in British gold, and, stored at Montreal, was waiting till the ice broke up in the St. Lawrence to be sent abroad. But the St. Lawrence was frozen long after the waters of the rivers and harbors of the United States were free. If, therefore, the embargo was taken off in February, the men who had obeyed the law could bring their flour, their potashes, their bacon to market, and load their ships and have them in the ports of Europe and the West Indies while the waters of the St. Lawrence were still covered thick with

ice. Keep on the embargo till June, and the merchants would find the foreign market glutted with the produce the law-breakers had carried into Canada and which was then ice-bound at Montreal.

Those who favored March fourth as the day did so because on that day the new administration would begin; because the natural embargo laid by winter on the rivers and ports of the North would then be over and no unfair advantage given to the ports of the South; because if war followed the repeal, and there was good reason to believe it would, the summer would be needed to seek on the Plains of Abraham, and in the fisheries of Newfoundland, indemnity for the hurt we had suffered on the ocean.

This prospect of war, it was answered, is a good reason of itself for keeping the embargo till the first of June. What is now our condition? Our seaports are undefended; our gun-boats are unmanned; our treasury is nearly empty; our army is not yet raised; and must we not have an army? Does anybody think we can make war on Canada with militia? Does not everybody know that it is a question whether under the Constitution militia can be sent out of the country? Our army must be a regular army and well drilled. Keep on the embargo, and time will be secured for all these things. Then, when we are ready to strike, our enemy will perhaps listen to our last offers of peace and repeal his orders. If not, we shall at least be armed, and armed in a just cause.

To this must be added a fourth class, who insisted that the embargo must not be repealed at all. Was Congress a parcel of boys that it should pass an act to enforce the embargo in January and repeal both Force Act and embargo in February? Was the Government of the United States going to yield obedience to the demands of factious men goaded on by avarice and British gold? Better see the country spill its best blood. What a precedent it would be for all time to come if a handful of rebellious citizens are suffered to rise in opposition to laws fairly and constitutionally enacted! At last, after a rambling debate of four days, the motion to fill the blank in the resolution with the words June first

was lost by seventy votes to forty-three. By precisely the same vote it was then carried to put in the words March fourth. The blank being thus filled, the question of repealing the embargo came up and was carried, the ayes being seventy-six.

At this stage of the debate a caucus of the Republican members was held and three things decided: The embargo should be repealed; letters of marque and reprisal should not be issued; and non-intercourse should be used instead. All the resolutions before the Committee of the Whole, the resolution to repeal the embargo, that to arm merchant ships, that to establish non-intercourse, that to exclude armed vessels from American waters, were sent to the Committee on Foreign Affairs with instructions to report a bill. The bill came in on the eleventh of February, and after a few changes passed each house.

The act shut the ports of the United States to the public ships of France and England on the day of its passage, closed them to private ships of those two nations on the twentieth of May, and repealed many of the embargo laws on the fifteenth of March. On that day it ceased to be necessary for captains of coasters to load their ships under the eye of an officer of the revenue, and to give bonds that their cargoes would really be landed in the United States. On that day the fishing boats that went out of the Narrows for bluefish and haddock, or down the Delaware in search of shad; the market boats that supplied the stalls in New York and Philadelphia; the craft that sailed the waters of bays and rivers, sounds and lakes not adjacent to foreign soil, were free to do so without a clearance. On that day trade was again revived with every foreign port save those of France and England, their colonies, their dependencies, and places actually under their flags. With such ports there was to be non-intercourse. Nothing could be carried to them. Nothing could be brought away. To go to them was indeed a great temptation. The law therefore provided that no vessel should clear for any port, foreign or domestic, till a bond had been given that it would not be engaged during the voyage in trade, direct or indirect, with the forbidden places. Should France revoke her decrees, or Great

Britain her orders in council, the law might be suspended and trade renewed by proclamation of the President. The law was to continue in force till the end of the next session of Congress and no longer. At that time, too, the act laying the embargo, the three supplementary acts, and the Force Act, were all to expire. The day for beginning the next session had just been fixed as the fourth Monday in May. To the hopeful, therefore, it seemed not unlikely that, before the leaves were again falling, the streets of the great seaports would once more be noisy with the rumble of loaded carts; that the exchanges would once more resound with the hum of busy merchants; that the books of the coffee-houses, so long unused, would once more be opened for the reports of captains and supercargoes; and that the neutral flag of the United States would once more be seen in the ports of every civilized nation on the globe.

Mr. Jefferson signed the bill on March first. Three days later he ceased to be President of the United States, and James Madison and George Clinton took the oath of office in the new Hall of Representatives. The idle pomp, the foolish waste of time and money, which now make memorable each inauguration-day were not even then wanting. All the militia, we are told, came over from Georgetown and Alexandria to escort the new President from his home to the Capitol. Ten thousand people, it was boastfully said, gathered to see the procession pass by. At night Jefferson and Madison and a distinguished company attended an inauguration-ball. Beyond the confines of the capital the day was little noticed. In a few towns the Federalists assembled at dinners and drank to the hour that ended the career of Thomas Jefferson and his General Embargo. A few journals thanked God that the rule of the philosophic President was over, and that no worse man than Madison was in his place. But, in general, the event was looked on as no cause for rejoicing. The succession of one Republican President by another Republican President was no victory for the Federalists. Their victory was the lifting of the embargo, brought about by nothing so much as by the firm stand taken by New England and the stout fight made by the minority in Congress. The leaders of this minority were ac-

cordingly singled out to be the recipients of high honors. To dine "the virtuous minority," to toast "the virtuous minority," became the delight of the Federalists of every city in which they could be induced to stop. From the moment Congress rose, the homeward journey of Pickering, of Quincy, of the New England delegation, became one long ovation. At Washington, at Baltimore, at Philadelphia, at New York, at New Haven, at Boston, the feasts given in their honor were the talk of the day.

When Pickering and his companions were about to begin their journey eastward, from one triumphant reception to another, Jefferson mounted his horse and made his way through snow and sleet to his beloved Monticello. Of all the houses yet built by man none surely was so much a part of the owner. What the shell is to the tortoise, all that was Monticello to Jefferson. The structure had grown with his growth, and bore all over it the marks of his individuality and curious inventive genius. The plan, the strange mixture of styles and orders, the bricks that formed the walls, the nails that held down the floors, much of the furniture, was the work of his own brain, or the manufacture of his own slaves. It was in the fittings and furnishings of his home, however, that the mechanical bent of his mind found free play, and carried him close to the bounds of eccentricity. On the top of the house was a weather-vane, which marked the direction of the wind on a dial placed beneath the roof of the porch. Over the main doorway hung a great clock, with one face for the porch and another for the hall. Cannon-balls were its weights, and one of them, as it passed down the wall, turned over each morning a metal plate inscribed with the day of the week. Not a sleeping-room contained a bedstead. Deep alcoves in the walls, with wooden frames for the mattresses, did duty instead. His own apartment was separated from that of his wife by two partitions, wide apart. Through these was cut an archway, taken up with the frame which supported the bed. One side of the bed was thus in the room of Mrs. Jefferson, and the other in the room of her husband. Above this archway was a closet, where in winter were stored the summer clothes and in summer the winter clothes of the entire family.

In his library were his "whirligig chair," his tables with revolving tops, and one with extension legs, to be used for writing in any position, sitting or standing. Trivial as these things seem, they are not to be forgotten in any attempt to judge the man.

CHAPTER XX.

DRIFTING INTO WAR.

The sage, as the Republican journals now called Thomas Jefferson, having, as they expressed it, "retired to the shades of Monticello," the administration of Madison began in earnest. To aid and advise in the work that lay before him, Madison selected four men to be secretaries. To William Eustis, who had been a hospital surgeon during the Revolution, and a practising physician and member of Congress since the Revolution, was intrusted the Department of War. Paul Hamilton, who had once been a Governor of South Carolina, was put in charge of the few sloops and frigates and the great fleet of gun-boats that made the navy. Robert Smith, of Maryland, became Secretary of State. To describe this man as the free choice of Madison would be unjust to the President. He was forced into the Cabinet by that faction of the Senate which hated Gallatin and looked for leadership to Duane of the Aurora, and to Senators Giles and Samuel Smith. They had begun by demanding for him the Secretaryship of the Treasury, and Madison had thought for a while of giving way. But Gallatin would accept no other place; Madison could not spare him, and Smith was given the Department of State. Vain, talkative, wanting in discretion, ignorant of the duties of his post, he was wholly unfit for the great office, and in a few weeks the President was forced to add to the duties of an Executive the duties of a Secretary of State.

The letters which Erskine despatched to Canning in November and December, 1808, had produced the wished-for effect, and on January twenty-third, 1809, Canning wrote his reply. He could not see, he said, either in the assurances of

the Secretaries or in the debates in Congress, any sign of a better feeling toward England. Yet he would, at Erskine's suggestion, issue new instructions in two despatches of the same date. This was done because Erskine was sure that when Great Britain withdrew her orders in council of January and November, 1807, the United States would withdraw her restrictions against Great Britain, leaving them in force against France; because he was sure that the United States was willing to give up all claims to a colonial trade in time of war which she did not enjoy in time of peace; and because he was very sure that, in order to carry out the embargo and stop American citizens trading with France, Great Britain would be free to capture American ships engaged in such trade. The first instruction gave Erskine leave to offer reparation for the Chesapeake affair. But he was on no account to do so till a proclamation had been issued shutting the ports to French as well as English ships-of-war. Then, and not before, he might disavow the orders of Admiral Berkeley, offer to return the men taken from the deck of the Chesapeake, and promise compensation to the widows and children of those who had fallen in that shameful fight. But he was charged, and the charge was most explicit, flatly to refuse any demand for further censure on Admiral Berkeley. The Admiral had been recalled, and recall was punishment enough. Indeed, further censure was impossible, for, only a few weeks before the despatch was written, the Admiral had been given a new command, far more honorable than the old, of which he had been deprived in America. Looking on the disavowal and the return of the sailors as concessions, Canning expected that the United States would also make concessions, and what these should be he undertook to say. There must be a disavowal of Captain Barron's enlistment of British deserters, a disavowal of all the outrages perpetrated on English property and Englishmen in consequence of the Chesapeake-Leopard fight, and a promise not to countenance in any way desertions from the English army or navy.

The second despatch was concerned with the orders in council of January and November, 1807. These, Erskine was to inform the United States, would be recalled on three con-

ditions. The three were: That all commercial restrictions of every kind—embargo laws, non-intercourse acts, non-importation acts, proclamations shutting the ports to ships-of-war—must be kept in force against France and repealed as to England; that all claims to a carrying trade in time of war not enjoyed in time of peace must be renounced; and that Great Britain should have the right to seize any American ship found violating the commercial restrictions against France. These accepted, Erskine was to promise that a minister should be sent to Washington with full power to consign them to a regular treaty. To do this would require time, and time, as Canning knew, was to be taken thought of. The United States might wish to act at once. The United States might wish to again enjoy without delay the benefits of the old trade with England and with the English colonies. If so, Erskine was empowered to agree that, whenever the United States should take off her restrictions against England, England would recall her orders in council as to the United States.

These despatches came early in April, and for two weeks the conditions and the offers were fully debated. Then, all being decided, three pairs of formal notes were drawn up, a proclamation written, and the whole made public in a National Intelligencer "Extra." The first note was from Erskine, and bore date April seventeenth. His Majesty, the note set forth, had been informed of the disposition shown by Congress to treat Great Britain in precisely the same way as she treated the other belligerent powers. His Majesty had thereupon commanded that, when Great Britain was so treated, offers of reparation should be made for the attack on the Chesapeake. In the opinion of Erskine, the act of March first, repealing the embargo, laying non-intercourse, and shutting French ships from our ports, put Great Britain and the belligerents on an equal footing. He was ready, therefore, to disavow the conduct of Admiral Berkeley, to restore the sailors taken from the Chesapeake, and to make proper provision for the families of the slain. Canning's letter bade him say that the offer of money to the families of the killed was an act of "spontaneous generosity" on the part of the King. But Erskine departed from his instructions, dropped the words "spontaneous gener-

osity," and, in the note to Smith, put down the offer of compensation as part of the reparation.

What seemed the answer of Smith, but was really the answer of Madison, was dated the same day. The President, he said, accepted the offer. But he wished it clearly understood, in the first place, that the act closing the ports to all belligerents was no concession to Great Britain, but was, in the language of the note, "a result incident to a state of things growing out of distinct considerations," and, in the second place, that while the President forbore to insist on the punishment of Berkeley, he was not insensible that such punishment "would best comport with what is due from his Britannic Majesty to his own honor."

On the morrow, the eighteenth of the month, Erskine sent his second note. The offer of reparation having been accepted, he had now to say that his Majesty would send an envoy extraordinary to reduce all the matters so long in dispute to a treaty. Meanwhile, his Majesty would be willing to recall the orders in council as to the United States if assurance was given that the United States would renew intercourse with Great Britain. To this the Secretary promptly answered that the President would gladly meet the friendly disposition of England, and that, should the orders in council be recalled, a proclamation restoring intercourse would surely issue. On the nineteenth Erskine, in his third note, promised the Secretary that the orders in council would be recalled on June tenth, 1809. The agreement having been thus put in diplomatic form, the notes and a proclamation were hurried to the office of the National Intelligencer and given to the world.

The notes informed the people why the proclamation was issued. The proclamation informed them that after June tenth they would be once more free to trade with Great Britain and her dependencies and with every foreign port not subject to the flag of France. When this was known in the seaboard towns, the rejoicings and the activity which followed the partial repeal of the embargo were more than redoubled. The riggers and the sailmakers could not do half the work that was offered. Every ship-yard was crowded with vessels waiting for a chance to be scraped and mended. Long columns

of notices of ships for charter and of ships for sale began to appear in the city journals. Merchants began to seek orders for foreign goods; the price of produce for export went steadily up, and in three weeks' time more than six hundred and seventy craft were ready to sail for the ports and colonies of England. Even Madison believed that the day of decrees and embargoes was gone, and ordered the gun-boats dragged up on the beaches and the detached militia to be no longer held in readiness to serve.

During a few weeks the President was the most popular man in the country. It was now easy to see, the Federalists said, what the obstinacy of Jefferson and his love of France had cost the country. Madison had not been six weeks President, and, lo! the whole attitude of Great Britain toward the United States had changed. Apologies, and concessions, and commercial benefits, which Jefferson could not get either by treaty or by threats, were, the moment his successor began to rule, graciously offered. In this laudation most of the Republicans concurred; but there were some who did not, and among them were many of the friends of James Monroe. By these men it was claimed that the President had gone too far. The proclamation was illegal. The plain intent and meaning of the law was that when Great Britain did recall her orders in council, then the President might declare intercourse restored. Great Britain had not recalled her orders, and, if Mr. Erskine was to be trusted, she would not recall them till June tenth. What power, then, had Madison to issue a proclamation before the tenth of June? What power had he to issue it at all till Mr. Erskine assured him that the orders, not would be, but had been recalled? Perhaps it would be well for Congress to look into this matter when it met in May. This, indeed, was done.

The extra session had been called that the country, if needful, might be made ready for war. But Madison in his message assured Congress that there would be no war; that intercourse was to be restored, that the gun-boats were laid up, that the militia had been discharged; and Congress, after sitting one month, adjourned. In the course of that month, however, some debates arose and some acts were passed which de-

serve, at least, to be noticed. The first of these debates took place in the House, and was brought on, as such discussions so often were, by a motion made by John Randolph. The House had just finished sending the suggestions in the President's message concerning foreign affairs, the army and navy, the protection of manufactures, and the fortification of the seaport towns to the proper committees, when Randolph rose in his place and began a long speech on the behavior of the President. He reminded his hearers how, in the good old times when Federalists held sway, the President used to come down to the building where the Congress sat and open each session with a speech; how each House would then frame an answer and, with its officers at its head, tramp through the streets to the President's dwelling, there to deliver the answer and there to partake of his cake and wine; how Jefferson had changed all this, had swept away the idle imitation of the English King, and, in the place of the speech, had put a written message to which no answer was ever made. This change he thought most sensible; but while it had done away with a foolish ceremony it had also done away with something that was not a foolish ceremony. Framing the answer had given to the minority a fine chance to praise or blame the measures of the administration. The loss of this chance was much to be lamented. There were times—and the present was one of them—when it became the duty of the House to give an opinion on public affairs. There were in the nation, nay, in the House, numbers of men who blamed the President for issuing the proclamation. If this was the belief of a majority of the House, the President ought to be plainly told so. If the majority approved of his action, he was entitled to know it, and to the support and comfort such knowledge would give him. Randolph moved, therefore, that the promptness and frankness with which the President had met the overtures of Great Britain were approved by the House.

To have made a motion more hateful to the majority would have been hard. That the statement was true, all admitted; but the resolution was pronounced ill-timed, in bad taste, out of order, not within the jurisdiction of the House. By what article, by what section of the Constitution, it was asked, is

the House given power to discuss, to praise or blame the conduct of the Executive? We have authority to pass laws and to do what is necessary to pass laws. We may censure, punish, expel, judge of the election of a fellow-member. It is our duty to impeach all officers of the United States who betray their trusts. These three classes make the sum total of our power. Does the resolution of the member from Virginia fall within either of these classes? Certainly not. It is not the basis of a law, and cannot, therefore, fall within the first class. It does not call for the punishment of any member or question the right of any one to his seat, and cannot, therefore, fall within the second class. As the purpose of the resolution is to praise, not to impeach the President, it does not fall within the third class, and is therefore outside the powers of the House and wholly unconstitutional.

The debate over, the House adjourned. The resolution thus became unfinished business, and, as such, was promptly called up by Randolph on the morrow. The House, out of humor with him, divided equally,* and the Speaker, voting no, refused to consider the matter. But Randolph was not to be put down. Day after day he called it up. Day after day it went over as unfinished business, till the better part of a week had been wasted in idle debating. Then it was laid on the table forever. The opposition was formed of two sorts of men—those who believed the resolution improper, and those who believed both the motion of Randolph and the action of Madison to be unconstitutional. Those who believed it improper gave four reasons for their opinions: It would turn the House into a council of censors to try the conduct of the President; it would reflect on the conduct of the administration just ended; it would, if adopted, have a bad effect on the mind of Madison; it was without precedent. Of those who stood out on constitutional grounds, not a few gave as their reason that the House had no authority to approve or disapprove the conduct of the President. These were asked where the House got constitutional authority to thank the Speaker at the end of each session, to appoint and pay a chap-

* Fifty-four to fifty-four.

lain, or to furnish each member with three newspapers. If express authority was not needed to do these things, it surely was not needed in order to approve the conduct of the President. Those who held that the proclamation was illegal fell back on the language of the Non-intercourse Act of the previous March. The words of the act were: "In case either France or Great Britain shall so revoke or modify their edicts as that they shall cease to violate the lawful commerce of the United States," the President shall "declare the same by proclamation, after which the trade of the United States may be renewed with the nation so doing." Did not this mean, they asked, that the fact must exist before he could proclaim it? An assurance had, indeed, been given that the orders would be recalled. But where was the authority to accept the assurance for the fact? Far be it from them to blame him for his misconstruction. And as far be it from them to approve. He had kept the spirit, but broken the letter of the law, and the best policy of the House was to say nothing, and by a law legalize what he had done. After four days of such discussion the motion to postpone indefinitely was laid on the table.

And now followed a series of debates on all manner of subjects. On the New Orleans batture; on the expedition of Miranda; on the expediency of remunerating the sufferers under the Sedition Act of 1798; on selling the gun-boats; on protecting manufactures; on continuing non-intercourse with France. The House was still wrangling over the batture when the hour for final adjournment came, and nothing was done for want of a quorum. The petition of the thirty-six prisoners taken with Miranda, and then languishing in the dungeon at Carthagena, produced some bad feeling in the House and a duel between two members out of doors. The sufferers under the Sedition Act were not remunerated; the gun-boats were not sold; no protection was given to manufactures; but the old Non-intercourse Act was greatly amended.

While Congress was busy debating these questions the tenth of June arrived, and, after almost eighteen months' cessation, trade was once more resumed with Great Britain and her dependencies. This happy return to peaceful ways was, in the opinion of the Federalists, the fruit of their labor, the work of

their hands. They determined that the tenth of June should, in consequence, be a white day, and set it apart as that on which to give public expression to the joy and satisfaction they felt that the United States was at last relieved from the paralyzing effects of Jefferson's non-intercourse and embargo. At Boston, at Salem, at Providence, there was bell-ringing and cannonading and feasting. At New Haven there was a grand parade. At Philadelphia there was a dinner at the City Hotel. But most of the Federalists went down the Delaware in a fleet of boats, and kept the day at Gloucester Point. At New York there was a fine dinner at the Tontine Coffee-House, and so long a list of toasts and volunteers that few of the revellers rose from the table sober. But the day was not observed so hilariously as had been intended, for, on the eighth of June, the packet Pacific, from England in thirty-one days, arrived at New York with news that a new order in council, which seriously affected the interests of the United States, had been issued late in April. In consequence of these tidings, the committee appointed by the city corporation, the General Republican Committee, and the Tammany Committee, to make arrangements for the celebration of the tenth, reported that it would be inexpedient to have any public rejoicings, and recalled their plan.*

The news was but half told. The old orders of November, 1807, were indeed recalled. But, in their stead, others were issued laying a blockade on the ports of Holland, France, and northern Italy.† As this became known, the joy and confidence exhibited on June tenth gave way to a well-grounded alarm. How, it was asked, was it possible to reconcile the position of England, as set forth in the notes of Erskine on the seventeenth and eighteenth of April, with her position as set forth in the orders of the twenty-sixth of April? Was Canning tricky? Could Erskine really have been authorized to act as he had? If so, why, at the very time he was agreeing to open the ports of Holland, did Canning deliberately shut them? So great was the distrust aroused in Congress that

* Baltimore Evening Post, June 12, 1809.

† Orders in Council, April 26, 1809. American State Papers, vol. iii, p. 241.

Erskine made haste to assure the Secretary of State that the new orders had no connection with the agreement, which would be punctually fulfilled.* Never was man more mistaken.

The report of what had been done reached Canning on May twenty-second, was instantly laid before the King, and the agreement as promptly disavowed. Indeed, at the very moment that Erskine was writing to assure the Secretary that the new orders meant nothing and that trade would be made free, a letter recalling him was on the sea. A note was next despatched to Pinckney, with a copy of an order in council to the effect that any merchant-ship which, in consequence of the proclamation, should, between April nineteenth and July twentieth, leave the United States for ports blockaded by the orders of January and November, 1807, should not be molested. Pinckney was further informed that all observation on the affair would be made at Washington, through a minister soon to be sent out in Erskine's place.

To Erskine three reasons for the disavowal were given: He had left out a preliminary of great importance. He had departed from the terms of his instructions. He had accepted and transmitted a note containing language such as no minister of his Majesty ought ever to have received.

The important preliminary omitted was a requirement, before negotiation began, that French ships should be forbidden to enter American ports, and that those already in should be ordered out. The departure from instructions consisted in not demanding that the proclamation of July second, 1807, should be recalled, and in treating as a positive obligation his Majesty's gracious offer of bounty to the families of the seamen killed on the Chesapeake, which was purely an act of "spontaneous generosity." He had suffered the dignity of his sovereign to be degraded when he received from Smith the note telling him what "would best comport with what is due from his Britannic Majesty to his own honor."

Though the letters of Canning were written on the twenty-

* Erskine to the Secretary of State, June 15, 1809. American State Papers, vol. iii, p. 297.

second, twenty-third, and thirtieth of May, they did not reach Erskine till July twenty-fifth. English newspapers of May twenty-fifth, received as early as July twenty-first, made known to the people the official disavowal of Erskine, and, as the news spread along the seaboard, the scenes of the early days of the embargo were again enacted. Ships were loaded with the utmost speed and hurried to sea, lest orders should come to the collectors to stop them. But two weeks passed before Madison issued a second proclamation recalling the first and renewing non-intercourse with Great Britain. With copies of the proclamation went circular letters from Gallatin to the collectors of the ports. They were reminded that the Non-intercourse Act of March first was once more in force, but were instructed to consider it suspended as to three classes of ships.

For a while the Federalists insisted that the disavowal was only temporary; that Great Britain would stand by the bargain; that the new Minister would make all things right in the end. But even they lost heart when it was announced that Francis James Jackson had been chosen for the place.

Early in September, Jackson, with his wife and his children, his servants, his horses, his carriages, and his plate, landed at Alexandria and hurried on to Washington without delay. Erskine soon after departed and boarded an English war-ship then at anchor in Hampton Roads. She was to carry him back to England, and would sail, it was announced, with the first fair wind. But so many fair winds came and went and left the ship at anchor that it began to be whispered that she was waiting not for wind, but for despatches. What, it was next asked, can Mr. Jackson be doing? Has he really come as a messenger of peace? Will the President listen to his excuses? Is non-intercourse to be taken off? The Republican prints solemnly declared that he was doing nothing and could do nothing, and soon had the satisfaction of printing a document in which as much was admitted over his own hand.

The document was really an appeal to the American people; but it appeared in the form of a circular letter to the British consuls in the United States. The consuls were informed that Jackson had changed his residence from Washington to New York; that he had done so because the Secre-

tary of State would no longer have communication with him, and that communication had been broken off because of certain facts it had been his unpleasant duty to state and adhere to. One of these facts Secretary Smith had admitted. This was that the American Government knew of the three conditions on the acceptance of which by the United States Great Britain would recall the orders in council of January and November, 1807. The other fact, that they were the only conditions on which the orders would be recalled, was known to him by his instruction, and, by insisting on this, he had offended the American Government.

The people for a while were at a loss to know just what this circular letter meant. It was clear, however, that a serious breach had taken place, and this was enough for the Republican journals. Without waiting to learn the cause they turned on the English Minister and abused him roundly. They nicknamed him Copenhagen Jackson; they warned him not to play his tricks on the Government of a free people, and pronounced his letter to the consuls a poor imitation of Genet's appeal to the people. Affecting alarm at these threats, he applied to the Secretary for passports or letters of protection for his servants, his family, and himself. This request was made because he had already been insulted by the people of Hampton and because the newspapers were daily, in his opinion, urging the people to do acts of violence to his person.

The Federalist press, with equal folly, warmly defended him. Their readers were advised to remember that there were two sides to every quarrel. Jackson might, perhaps, have been guilty of flinging back some of the insolence that had probably been meted out to him; but that he had deliberately insulted the Government remained to be proved. Just men would do well, therefore, to suspend judgment till Congress met, when the whole correspondence would surely be called for. No call was necessary, for, when the eleventh Congress met, the correspondence accompanied the message.

Jackson had left England instructed to give no reasons for the disavowal of the Erskine agreement; to offer no reparation for the Chesapeake outrage till the President gave a written assurance that the proclamation of July, 1807, was recalled;

to offer nothing regarding the recall of the orders in council, but to receive any proposals from the United States that might comprehend the three conditions imposed on Erskine; to insist on the enforcement of the rule of 1756. That he should ever have left England thus instructed is amazing. Failure, and nothing but failure, awaited him, and this Canning must have known. Nevertheless, he set out, and, on reaching Washington, found that the President had not returned from his Virginia plantation. The month of September was accordingly spent in riding over the country about Washington, reading the correspondence of Erskine, and making friends. On October first Madison returned and the official interviews began. Smith was instructed to sound Jackson and find out, if possible, what his instructions were; but, after two fruitless conversations, Madison took the matter out of the hands of Smith and dealt with Jackson himself. As the President could not openly appear in the negotiations, Smith was instructed to forward to the British Minister a long note written by Madison. Jackson was reminded of the agreement with Erskine, of the disavowal by England, and of the recall of Erskine, with every mark of displeasure. He was told that, under the circumstances, nothing was more reasonable than to expect from him a prompt and full explanation of this conduct. He was assured that the President heard with great regret that he had no instructions to make any explanation. He was asked if the President was to understand that in the matter of the Chesapeake he was merely to offer a note of satisfaction not to be signed and delivered till he saw and approved the answer of the United States; that he was not to make any proposition to revoke the orders in council; and that England had no intention to revoke them unless the United States would enforce non-intercourse against France, suffer the navy of England to capture American ships evading this law, and give up all claim to a carrying trade in time of war which she had not enjoyed in time of peace.

He was then informed that, to avoid the misconception sometimes incident to oral proceedings, it would be well to carry on all future negotiations in writing.

Jackson answered in great heat, protested against such

treatment, and declared there did not exist in the annals of diplomacy a precedent for turning from oral to written communications at so early a stage in negotiations. Passing to Madison's letter, he observed that there was no need for any explanation of the disavowal. Reasons had been given to Pinckney at London, and had been sent to Erskine at Washington. The belief, so often expressed by the Secretary in conversation, that Erskine had two sets of instructions, and that the agreement had been made in accordance with one of them, he pronounced unfounded. Erskine had but one set. These he had greatly exceeded, and, Jackson plainly intimated, had done so with the connivance of the Secretary.

Madison took a week to reply, and then sent back one of the best state papers he ever wrote. He reminded the angry Minister that there was a precedent in the annals of diplomacy for the treatment of which he complained; that the precedent was of recent date and of English origin; and that it had been established by Canning when, in 1808, he stopped oral communication with Pinckney after the second interview. He told Jackson that an explanation of the reasons for disavowing Erskine was needed; that those made to Pinckney were by word of mouth, and were in no wise formal; that Canning had refused to reduce them to writing and make them formal because the proper place for such explanation was Washington, and the proper channel Erskine's successor. This, Madison thought, was sound reasoning, and on it based three assertions —that when a government refused to make good a pledge, a frank and formal disclosure of the reasons was due; that Jackson, as Erskine's successor, was the proper person to make the disclosure; that, if he had no authority to make it, then the President was ready to settle the matter in any honorable way. Jackson must understand, however, that the statement that Erskine had but one set of instructions was news to Madison. Had he known it, no such arrangement would ever have been made. Nothing was more common than for a minister to have, if not two sets of instructions, at least two grades of the same instructions, and beginning with what is desirable, to end with what is obtainable. This was what Mr. Erskine was thought to have done, and what he believed himself empowered

to do. The reply of Jackson to this was clothed in diplomatic language. But in it he meant to say, and was understood to say, that the Secretary lied, and that the Government well knew Erskine had no authority to make the agreement he did. After waiting a week, Madison answered that "such insinuations are inadmissible in the intercourse of a foreign minister with a government that understands what it owes to itself." But this hint was not taken. Jackson again flung back the charge of falsehood, and was told in reply that no further communications would be received from him, and that the necessity of this course of action would at once be made known to his King.

The moment these despatches were read by the people they became, both in Congress and out of Congress, the subject of violent debate. Everywhere the Federalists defended Jackson. Everywhere the Republicans supported Smith. It is now clear, said the Federalists, that Erskine was tricked, duped, ensnared. By one means and another he was persuaded to enter into an agreement he had no authority to make. And now, for rejecting this unauthorized agreement, the King is abused and reviled most shamefully. But had he no precedent? Had the mammoth of Democracy done nothing of the kind? Had not he rejected a treaty made and approved by no less a Democrat than James Monroe? If Thomas Jefferson may repudiate a treaty, why may not King George disavow an agreement? If Jackson is to be sent away for insisting that Erskine had but one set of instructions, ought not Smith to be sent away for insisting as stoutly that Erskine was thought to have two?

Erskine, said the Republicans, has indeed been duped. But he has been duped by his own gracious master. It is impossible to read his instructions and not see that he kept the spirit, whatever he may have done with the letter. Had the treacherous King who sent them been in earnest, the conduct of the Minister would have been praised, not blamed. But he was not in earnest. American food, not American friendship, was wanted, and, this secured, the agreement is cast aside as no longer useful. The prompt disavowal, the recall of the Minister with every mark of anger, the generous leave for

American ships laden to the water's edge with produce to enter the British ports where that produce was wofully needed, is all for show. Consider the time and the manner of issuing that order. The agreement was closed and the proclamation published at Washington on the nineteenth of April. On May twenty-second the agreement was disavowed, and on May twenty-fourth the order in council concerning American ships was issued. News of the agreement then crossed the Atlantic in thirty-three days. But news of the order in council did not reach the President till July thirty-first, just sixty-eight days after it was put forth. Was this accidental? Was nothing to be gained by this delay? Read the order and see. Read especially that part which declares that ships bound from the United States to Holland shall not be exempt from capture unless they set sail before the twentieth day of July, five days before the orders reached any port of the United States and eleven days before they were known in Washington. Every ship, therefore, which, between July twentieth and August ninth, left an American port for Holland is at this moment subject to British capture. Does the order, again, exempt vessels which have sailed for Dutch ports other than those of Holland? It does not; so these vessels are also subject to British capture. Does the order, once more, exempt ships coming home from Dutch ports with cargoes? It does not; so these ships are also subject to British capture. Does anybody, unless he is a Tory and a member of the Junto, doubt that they will be captured? Bad feeling, bad faith, insolence, and rapacity have marked the conduct of England and her ministers toward the United States ever since the day when, in deep humiliation, she laid down her arms at Yorktown. This is why she chose Mr. Jackson to replace Mr. Erskine. The war in Europe had thrown thirty gentlemen of her diplomatic corps out of place. Yet from among these thirty she chose the one man whose name is an affront forever to all neutral nations—the man who, at Copenhagen, did the foulest wrong that has ever yet been done to the rights of a neutral people. All this, however, our long-suffering rulers overlooked. Mr. Jackson came. Mr. Smith hurried to Washington to meet him. The President, with a haste that was

scarcely seemly, sped from his home in Virginia to Washington and formally received him. To tell what then followed is simply to tell the old story over again. Whoever the minister in England, whoever the minister in the United States, it is all one. Be it Pitt or Grenville, be it Jenkinson or Addington, be it Dundas or Canning, insolence and outrage are heaped on us just the same. Hammond insolently defending the speech of Lord Dorchester to the Indians in 1794; Bond, the British *chargé d'affaires*, declaring that if the House of Representatives did not vote money to put Jay's treaty into force, the frontier posts would not be given up; Liston conspiring with Blount and Chisholm to destroy the neutral position of the United States with respect to France and Spain; Merry impudently attempting to enforce monarchical etiquette on the Executive of a free people; Rose seeking to bully the Government into obedience to the commands of the King; Erskine planning an agreement his master never for a moment meant to keep; Copenhagen Jackson insulting the Secretary in his notes and the whole people in his circular—such has been the behavior of every minister Great Britain has yet sent to the United States. Shall this new affront be borne with the same meekness as were the old? This is the question for Congress to settle, and in settling it let us hope that Congress will exhibit the spirit and the firmness of Secretary Smith.

Congress, indeed, was prompt to act. In the Senate so much of the message as related to the trouble with Jackson was sent to a select committee, and from the committee in a few days came a set of resolutions and a bill. The resolutions set forth that the intimation of Jackson that the United States had entered into the agreement with Erskine knowing that he had no powers to make it was "highly indecorous and insolent"; that the repetition of the same intimation a few days later was "still more insolent and affronting"; that the Secretary had done well in refusing to treat with him further; that the circular addressed to the consuls was a still "more direct and aggravated insult and affront to the American people and their government"; and that Congress was ready, if necessary, to call out the whole force of the nation to repel such insults, and to maintain the rights, the honor, and the interests of the

United States. The bill gave the President power to send offending ministers out of the country.

In the House the temper displayed was angry and excited. There, too, so much of the message as related to foreign affairs was sent to a select committee. But long ere the committee was heard from, a dozen resolutions were on the clerk's table. One proposed that commanders of American armed ships be ordered to stop and bring in every English ship bound to a port not within the dominions or colonies of England, and every French ship bound to a port not within the dominions or colonies of France. Another proposed that English ships thus brought in should be held till a duty had been paid on the goods and a license to trade taken out by the ship. A third proposed that French vessels thus stopped should be held till Congress decided what to do with them. A fourth, that an *ad valorem* duty be laid on goods, wares, and merchandise the growth or product of Great Britain. A fifth, that citizens of the United States be forbidden to trade under the license of any foreign prince or state to any port not under the rule of that prince or state. There were resolutions calling on the Committee on Commerce and Manufactures to consider the fitness of limiting the carriage of American goods and produce to American-owned ships; to consider the fitness of forbidding American vessels taking anything out of the ports of the United States which was not grown, produced, or made in the United States; and to consider the fitness of forbidding American ships to carry foreign goods from one foreign port to another; there were resolutions to lay yet greater discriminating duties in favor of ships owned and wholly manned by citizens of the United States; to stop foreign vessels bringing foreign goods to the United States unless the product of the country to which the ships belonged; and to add to the duty on distilled spirits coming in foreign vessels from ports with which citizens of the United States could not trade.

The movers defended their resolutions as retaliatory. They were propositions to do to England just what England had so long been doing to us. Is not this, they asked, both wise and just? Are we not as much a nation as Great Britain? Are we not as independent as Great Britain? Has she any rights

that we have not? If she can stop and seize and confiscate our ships because they carry on a trade she sees fit to forbid, may not we seize her ships for carrying on a trade we see fit to forbid? If she may turn our vessels into her ports to pay a duty and take out a license before they may go to Holland, may not we do the same to her vessels on their way to Brazil and the Spanish Main? Undoubtedly we may; for to say that we have no right to do to England what England does to us is to say that she may demand without limitation and that we must submit without complaint.

While the House was considering some of these resolutions and laying others on the table, that approving the conduct of the President in the Jackson affair came down from the Senate, and brought on a warm debate on the behavior of the English Minister. The debate began on the nineteenth of December, and, save for a few days' recess at Christmas, went on continuously till the fourth of January. So bitter did it become that on the last day the Speaker was nineteen consecutive hours in the chair. Then, in the early gray of morning, but while the lamps were still burning, the clerk was bidden to call the roll. As he did so, seventy-two members said Yea, forty-one said Nay, and the resolution was carried. The vote was strictly partisan. Every Federalist answered Nay; every Republican answered Yea. Of the forty-one nays, four came from North Carolina and four from Virginia. The rest were from men sent by the people of New England and New York.

Having thus pledged itself to vigorous measures, the House went on to take into consideration a long bill. This bill was the work of Gallatin, but was reported by the select committee on so much of the President's message as related to foreign affairs, and was known sometimes as "The American Navigation Act" and sometimes as "Macon's Bill No. 1." Of the provisions, some were to take effect at once and some on April fifteenth, 1810. All were to expire with the next session of Congress. Those to take effect at once provided that no ship, public or private, flying the flag of France or England should be suffered to enter any port of the United States; and that no merchandise should come, directly or indi-

rectly, from any of the ports or colonies of France or England unless they came in ships owned by citizens of the United States. Those to go into force on April fifteenth provided that after that day all trade with France and Great Britain must be direct; that if either belligerent recalled or so changed her decrees that she no longer violated the neutral trade of the United States, the President should declare this by proclamation; and that, the proclamation having been issued, trade should at once be renewed with the power that had modified her decrees.

Concerning the first section, which shut out the armed ships of France and Great Britain, and the eleventh section, which repealed the Non-intercourse Act of 1809, the House was of one mind; indeed, not a member who spoke had a word to say against either. The section which parted the House, which produced a long and tiresome debate, which gave the bill the character of a navigation act and was finally carried by an almost strictly party vote, was the fifth. By this all trade with France and Great Britain was, after April fifteenth, to be carried on in ships built and owned in the United States.

We object to this bill, said the Federalists, who opposed it to a man, because no good can come of it; because it is a shameful submission to the decrees of Great Britain and France; because it is a continuation of the old restrictive system; because Great Britain will retaliate; and because it can not possibly be carried into effect. The bill, indeed, is nothing but an old remedy in a new form. Four years ago we tried it in the shape of non-importation. Two years ago, in the form of an embargo. Last year it was a non-intercourse act that was going to do wonders, and now it is again before us as an American navigation act that cannot fail to be a panacea. But it will not be a panacea, for it is, if possible, more detestable than any other one of the shameful series to which it belongs. In the Embargo Act we said to Great Britain: We cannot fight you; your navy is too great; but we will not submit. We will shut our ports, we will destroy our commerce, we will not leave one ship on the ocean to gratify your insatiable love of plunder; but obey your orders we will not. This was the language of freemen. To talk, however, is one thing; to act

is quite another. The law could not be enforced. Evasion followed evasion, and supplementary act followed supplementary act, till the series ended with the Force Bill and the people rose in righteous anger and wiped it from the statute-book. Then came non-intercourse. In that we said to France and Great Britain: We will renew trade with all the world save you and your dependencies. With you we will have nothing to do. You shall not come to our ports. We will not go to yours, for you are lost to every sense of justice and of honor. Yet even this law cannot be carried out. The people are determined to trade where they will; and the name of Amelia Island, which one year ago was unknown to half the members of this House, is now as well known as the names of the days of the week. Disobeyed at home, powerless to effect any concession abroad, non-intercourse is in turn condemned, and we are again asked to pass an American navigation act—another name for submission. Trade is now to be renewed even with England and France, provided it be direct and carried on in American ships. What is this but saying, We submit; we have been wrong; we accept the conditions you are pleased to lay down; we will forget the insults, the injuries, the black treachery of the past; we will take your hand, red with the blood of Pierce and the slaughtered seamen, open our ports to your goods, go to such markets as you allow, and furnish you with all the means necessary to keep on oppressing us? And will she not keep on oppressing us? Does any one doubt for a moment that she will retaliate?

We deny, said the Republicans, that England will retaliate; we deny that a navigation act cannot be carried into effect, and we deny that it bears any resemblance to the embargo or the Non-intercourse Act now in force. The embargo was a restriction on our own citizens; the Navigation Act is to be a restriction on foreigners. The embargo would not suffer an American citizen to send his cotton, his flaxseed, his rice, his flour, his salted fish, to any foreign port whatever. The Navigation Act leaves him free to send his goods to any port he pleases, and gives to the American ship-owners all the carrying trade between the United States, Great Britain, and France. We favor the bill because it will break up the law-

less trade with Amelia Island; because it will confine the carrying-trade of the United States to American ships; because it will restore our commerce; and because we firmly believe that it will in the end bring not one but both of the belligerents to terms. Toward sundown, on the twenty-ninth of January, the question on the passage of the bill was put and carried. Seventy-three members answered Yea and fifty-two Nay.

From the House the bill passed to the Senate, and by the Senate it was quickly killed. Every section save the first, which shut out the armed ships of France and England, the second, which laid down the penalties for refusing to obey, and the twelfth, which limited the act to the end of the next session of Congress, was stricken out, and, thus mutilated, the bill went back to the House. The House in a rage restored the sections and again sent it to the Senate. The Senate thereupon refused to concur and demanded a conference. The House voted to insist on their bill and granted the conference. But it might as well have never been held, for the Senate conferrees having made a proposition which the House conferrees would not accept, and the House conferrees having made a proposition which the Senate conferrees would not accept, they parted, and Macon's Bill No. 1 was lost.

The quarrel which thus sprang up between the two branches of Congress by no means disposed of the question in dispute. Indeed, a week after the Representatives had voted not to yield to the wishes of the Senators a new bill from the select committee on so much of the message of the President as related to foreign affairs was being hurried on to a second reading. This became known as "Macon's Bill No. 2."

As it came from the committee, the new bill contained three sections. One repealed the third section of the amended Non-intercourse Act of June twenty-eighth, which forbade American merchant-ships going to England or France. Another declared that all penalties incurred under the Embargo and Non-intercourse Acts should be collected. The third provided that if, before March third, 1811, either France or England should repeal her decrees and cease to violate the neutral commerce of the United States, the President should proclaim

the fact, and that if, within three months after the issue of the proclamation, the other power did not likewise repeal her decrees the old Non-intercourse Act should be enforced against that power. But the bill had not left the House when a fourth and a fifth section were added. The fourth closed the ports of the United States to the armed ships of France and England. The fifth laid a duty of fifty per cent. *ad valorem* on goods, wares, and merchandise of foreign growth or make.

The measure at best was weak and spiritless; but, weak as it was, the enemies of Gallatin in the Senate would not approve it, and sent it back to the House greatly altered. The provision for a duty of fifty per cent. was stricken out. Every other section was in some way amended, and a new one, giving the President power to use the war-ships as convoys, was added. Most of the changes were merely verbal and were accepted without a murmur; but to drop the duty and keep the convoy provision was something the House stoutly refused to do. To restore the duty was something the Senate in turn refused to do. After a conference each yielded, and, during the last hours of the last day of the session, the House passed the bill without the provision for convoy and without the extra duty and sent it to the President. Madison, who, as was his custom at such times, was waiting in a committee room hard by, signed the bill at once. Not many minutes later Congress adjourned; the total Non-intercourse Act of March, 1809, expired by limitation, and Macon's law took its place and closed the series of commercial restrictions by which Congress sought to break down the encroachments of England and of France. First in that series was the partial Non-intercourse Act of 1806. Next was the embargo of 1807, its supplementary acts, and the Force Act of 1809. Then came the total Non-intercourse Act of March first, 1809, and, last of all, Macon's Bill No. 2. With it the long struggle for free trade and sailors' rights ended and the country drifted slowly but surely into war.

The effect of the new law was to renew free trade with England and with France till March third, 1811. If before that day either belligerent revoked or so changed her edicts that they ceased to hinder the commerce of the United States,

the President was to make known the same by proclamation. This done, he was to wait three months. If at the end of three months the other belligerent had not in like manner revoked her decrees, nine sections of the Non-intercourse Act instantly revived and went into force against her. It might, indeed, happen that neither power would revoke her decrees; but for this the law made no provision. Such an event, it was well known, could have but one result, and that result would be war. It may readily be believed, therefore, that our ancestors waited with no common anxiety for news of the reception accorded the law by France and England.

Armstrong, on the twenty-ninth of April, 1809, had transmitted the total Non-intercourse Act to Count Champagny, with a long letter of explanation. The Count was assured that the law had been forced on the United States by the circumstances of the time; that it was merely a precautionary measure; that it had been reluctantly adopted; and that the moment the decrees of Berlin and Milan were revoked, it was to be suspended. Napoleon was at that moment deeply engaged in his fourth war with Austria, and, before the letter could reach him, had entered Vienna and taken up his abode in the palace at Schönbrunn. There, on the eighteenth of May, he received by the same courier news of the repeal of the embargo, of the establishment of non-intercourse, and of the British orders in council revoking the orders of November, 1807, and blockading the coasts of Holland, France, and Italy. For the moment he determined to make no concessions, and sent off a long letter to Champagny expressing his views. But the following week he received from his Minister of Foreign Affairs a report on the troubles with America, and completely changed his mind. The stoppage of neutral commerce, Champagny told him, had destroyed the demand for staple products, had ruined the farmers who raised and the middle-men who marketed them, had dried up a fruitful source of revenue, and brought much misery on France. In the face of these facts, to persist in punishing America was most unwise. For by the aid of American ships the overflowing warehouses of France could soon be emptied, and the raw material, so necessary for the continuance of French manufactures, and

the produce so necessary for the life of the French people, could be obtained in plenty.

The arguments of Champagny undoubtedly weighed much with Napoleon. But the news of Erskine's agreement and the proclamation of Madison weighed more, and, under the influence of both, he gave way and framed a new decree, revoking that of Milan, and leaving neutral commerce to be regulated by that of Berlin. It would have been fortunate had he held to his purpose. But, while he waited to hear from the officers of the customs just what the effects of such a regulation would be, he learned that England had disavowed the agreement. All thought of concession was instantly abandoned. The order to begin negotiations with Armstrong was countermanded, and the American Minister informed that the Emperor had changed his mind, and had changed it so completely that a decree, made ready by his command as a substitute for those of Berlin and Milan, had been laid aside indefinitely.* No surprise was felt by Armstrong, therefore, when, a month later, Champagny answered the note of April twenty-ninth with a flat refusal to revoke the decrees.

The principles of the Emperor, he stated, had not changed. Napoleon still believed that a neutral flag made neutral goods; still believed that to blockade by proclamation was a pretension as monstrous as absurd; still believed that a merchant ship was a floating colony; that to visit such a ship, search such a ship, impress a sailor from the deck of such a ship, was to violate the sovereignty of the country whose floating colony she was. That he did not respect these principles was true. He had been driven from them by the maritime tyranny of England. England had placed France in a state of blockade. The Emperor, by the decree of Berlin, had placed the British Islands in a state of blockade. England, by her orders in council of November, 1807, had laid a toll on neutral vessels, and had forced them to pass through her ports before they entered any port of France. The Emperor, by the decree of December, 1807, had declared that all ships paying this tribute were, by that very

* Armstrong to Secretary Smith, July 22, 1809. State Department Archives.

act, denationalized. These were measures of retaliation, and nothing more. When England revoked her blockade of France, France would revoke her blockade of England. When England recalled her orders in council of November, the Milan decree would fall of itself.*

To Secretary Smith the letter of Champagny seemed to contain a diplomatic hint. That France should ask England to recall her order was impossible. But might not he do so in the name of the United States? The Secretary thought he could, and at once instructed Armstrong to ask Champagny on just what conditions the Emperor would consent to revoke the decrees of Berlin and Milan.† If the conditions were reasonable, the answer was to be sent with the utmost speed to Pinkney. The conditions named were both reasonable and explicit, and were accordingly sent to London. The time for such a request as Pinkney had now to make was most unfortunate. News of the suspension of intercourse with Jackson had reached England. The demand for his recall had been made formally, and the King, greatly offended at the course taken by Secretary Smith, was not disposed to revoke orders offensive to America. Such being the state of affairs, it seemed best to Pinkney to act with great caution. He did not, therefore, ask for the repeal of any of the orders in council, but asked if any blockade laid on the coast of France before the first day of January, 1807, was still enforced by Great Britain. During two weeks no reply came. He was then informed that the order of May, 1806, had been "comprehended" in the order of January, 1807, which was still in force. The purpose of Pinkney was to obtain a distinct statement that the order of 1806 was not in force. To be told that it had been "comprehended" in another did not, therefore, content him, and he again sought for definite information. He inferred, he said, that the order of May, 1806, was not itself in force; that the blockade then laid existed, if it existed at all, by virtue of an order issued since the first day of January, 1807; and that he would be

* Champagny to Armstrong, August 22, 1809. American State Papers, Foreign Affairs, vol. iii, p. 325.

† Smith to Armstrong, December 1, 1809. Ibid, vol. iii, p. 326.

glad to know if his inferences were just. The second answer was as evasive as the first. The order of May, 1806, had never been recalled. The blockade which it established could not truthfully be said to rest wholly on the order of January seventh, 1807. It was comprehended in the latter. Such as the answer was, Pinkney received it thankfully; tried hard to believe that it meant the order was really revoked; sent a copy to Armstrong, and promised to seek once more for a formal revocation. This time he announced to Lord Wellesley the condition named by Champagny, or, as he is henceforth to be called, the Duc de Cadore, and asked for the recall of the order, or, at least, a declaration that it was no longer in force.

It was now the first of May, 1810. But May passed, as did June and July and half of August, without a word in reply. Indeed, none ever came, and, while he waited, Pinkney read in the London Times that Napoleon had recalled the decrees of Berlin and Milan, and that on the first of November they would cease to be law.

Scarcely had Champagny informed Armstrong of the condition on which these decrees would be annulled, and of the manner in which the Emperor would like to treat neutrals, when Napoleon gave a fine illustration of the manner in which he actually did treat them. The lifting of the embargo had been followed by the results the Republicans had predicted. A splendid navy of merchant ships, laden to the water's edge with the produce of our country, had gone off to Europe, never to return. Some set sail for the Baltic Sea. Some made straight for the ports of Holland. Some cleared out for the ports of Spain. Such as sailed for the Baltic fell in with the privateers of Norway, and twenty-six were soon in Christiansand for judgment. There such as had sea letters with dates altered or erased, or sea letters not signed by the Secretary of State, or could not show a charter party, were promptly condemned. But a fate far worse awaited such as reached the ports of Spain.

On the twentieth of May, 1809, a schooner flying the American flag and bearing a cargo of colonial produce entered the port of San Sebastian. Her case was a peculiar one. She had violated no law of the United States, for the embargo

had long been repealed, and trade with Spain permitted. She had not entered a port of England, had not paid a penny of tribute, had not on her voyage been visited by an English cruiser, had not done anything for which, under the decrees of Berlin or Milan, she could legally be condemned. As Spanish ports would, it was believed, soon be crowded with just such vessels, the question what shall be done with her was serious indeed. Unable to decide it, Decrès, the French Minister of Marine, referred the whole matter to Napoleon.* During two months the Emperor was too busy to give the question attention. But early in August he sent off to Champagny the draft of a new decree, which answered Decrès completely. The schooner at San Sebastian was to be seized and confiscated; the cargo was to be taken to Bayonne and sold; the money was to be paid into the "caisse de l'amortissement"; and thenceforth every American ship which came to any port of France, of Italy, or of Spain was to share the same fate; for the United States had, by the act of March, 1809, ordered the confiscation of any ship and cargo that came to her ports from France.

The decree was never published, and never became a law. But, from the hour it was written, the doctrine it asserted was a rule of action with Napoleon, and in a few months' time Berthier was seizing ships in Spain, and Joachim Murat in the port of Naples. Armstrong remonstrated, and was insolently lectured by Champagny on the fickleness of America, on her lack of energy, on the base submission she had made to England. He was told that the Emperor could place no reliance on the United States. The true course for America to take was clear. Let her tear in pieces the Declaration of Independence and become again a part of England, or manfully uphold her rights on the sea. But she had chosen a different course. She submitted to England and attacked France. Without the smallest ground of complaint she had shut her ports to French vessels, and denounced confiscation against any that might come in. This compelled his Majesty to retaliate, and he had seized the shipping in the ports of Naples, of Italy,

* Report of the Minister of Marine to the Emperor, June 7, 1809. French Archives, Foreign Affairs.

of Holland, and of Spain, because (and the reason was not founded on fact) French ships had been confiscated in America. What Napoleon would do with the ships he held Cadore did not attempt to say. But Armstrong was not left long in doubt. In March he was informed that the Emperor had ordered those in Spain to be sold. In May he received a copy of the Rambouillet decree. The cause of the decree was distinctly declared to be the Non-intercourse Act of 1809; and after the provisions of that act the provisions of the decree were modelled. The act prescribed that after May twentieth, 1809, no ship of France should enter any port of the United States. The decree prescribed that the ports of France and of countries subject to France should be considered as having been closed to the ships of the United States on May twentieth, 1809. The act prescribed that if any French ship did enter a port of the United States after May twentieth, it should be seized and confiscated. The decree prescribed that every vessel bearing the American flag which had, since May twentieth, 1809, entered a port of France, or of any colony of France, or of any country occupied by the army of France, or might enter there hereafter, was to be sold and the money placed in the "caisse de l'amortissement."

Though signed in March,* the public knew nothing of it till May.† By that time ships and cargoes to the value of ten millions of dollars had been seized in France, Spain, Holland, and Naples, and under it were soon condemned and sold.‡ This high-handed robbery was at its height when, toward the end of June copies of the Gazette of the United States containing the Macon act of May first, 1810, reached Paris. No communication on the subject had then come from the State Department to Armstrong. He took a Gazette, however, and sent it to Cadore, with the assurance that the text of the Macon act as therein printed might be considered as official.

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* March 23, 1810. American State Papers, Foreign Affairs, vol. iii, p. 384.

† May 14, 1810.

‡ In France, fifty-one ships; in Spain, forty-four ships; in Naples, twenty-eight ships; in Holland, eleven. The value of the one hundred and thirty-four exceeded four million dollars. The previous seizures at Antwerp and in Spain were valued at six millions.

Napoleon could hardly have finished reading the act before his decision was made. He would accept the offer of the United States. He would promise to revoke his decrees without ever intending to do so, and he would, meanwhile, admit just enough American goods to relieve that distress of the manufacturers of which Cadore had complained. He could not have supposed that such conduct would influence Great Britain in the slightest. Indeed, it was not intended to. His purpose was to regain that control of our commercial affairs which he had lost by the decrees of Berlin and Milan, and to embroil us still further in our dispute with Great Britain.

Within a week from the time Cadore received the Gazette a new decree issued restoring trade in a limited degree with France.* Under certain restrictions thirty American vessels were to be suffered to bring cotton, oil, dye-wood, salt fish, codfish, and peltry from the United States to France. But they must bring these goods and no others; they must come from the ports of Charleston or New York, and no others; they must take in exchange for their cargo French wines, French brandy, silks and linen cloths made in French looms, and jewelry and household furniture made in French factories; and each captain, to prove that he came from Charleston or New York, must bring a newspaper published in the city from which he sailed on the day he sailed; and a certificate from the French Consul with a sentence written in cipher.

Cadore next addressed to Armstrong a letter† with the comfortable assurance that on the first day of November the decrees of Berlin and Milan would cease to be in force if, by that time, Great Britain had repealed her orders in council or the United States had caused her "rights to be respected by the English."

This was the intelligence which, one morning in August,‡ 1810, Pinkney read in the London Times. With as little delay as possible he laid it before Lord Wellesley and begged to be allowed to assure his Government that the orders in council of 1807 and of April, 1809, were revoked. In the reply

* July 15, 1810. American State Papers, Foreign Affairs, vol. iii, p. 400.
† August 5, 1810. ‡ August 18, 1810.

Pinkney was reminded that, two years before,* a promise had been given that England would abandon her system of orders when France abandoned her system of decrees; and that when the Berlin and Milan decrees had really been revoked, when the commerce of neutrals was really free, his Majesty would gladly make the promise good.† To move Wellesley from this position, to persuade him that France was really sincere, to convince him that the decrees would be revoked, was impossible. Indeed, he would not so much as return an answer. Nor is it likely that he could have answered if he would. He had quarrelled with his colleagues. His colleagues returned his hate a hundred fold. Public business was at a standstill; the old King for the last time went insane, and when November first came the whole Government was in dire confusion. On November second Madison put forth his proclamation, and three months' notice was served on Great Britain. Just a week before he had by another proclamation served what might well have been called a notice of ejectment on Spain.

The downfall of the Spanish monarchy and the establishment of Joseph Bonaparte on the throne had been followed by revolt or by symptoms of revolt in almost every province of Spanish America. Encouraged by Great Britain, the people of Buenos Ayres rose in rebellion and drove out the viceroy appointed by the Supreme Junta of Spain. The people of Caracas quickly followed, and before midsummer Venezuela and New Granada and Mexico were in open revolt and signs of coming trouble were manifest in Cuba and West Florida. In West Florida the first district to feel the influence of the revolutionary spirit was New Feliciana, which lay along the Mississippi river just across the American boundary line of thirty-one degrees. Into it, since the purchase of Louisiana, had come hundreds of Englishmen, Spaniards, and renegade Americans, chiefly land speculators, deserters from the army, and men fleeing from debt. Seeing in the confusion spreading through all the Spanish provinces a fine opportunity to free themselves from the arbitrary rule of Spain, they began to agitate for

* February 23, 1808.

† Wellesley to Pinkney, August 31, 1810. American State Papers, Foreign Affairs, vol. iii, p. 366.

what they called a settled government, which meant a government of their own making, issued a call for a convention, and chose four delegates. Baton Rouge, St. Helena, and Tanchipaho responded to the call. The Governor, Don Carlos Dehault Delassus, gave his consent, and late in July the delegates met at St. John's Plains.* They sat with closed doors,† and, after deliberating two days, informed the Governor that they had chosen a committee to frame a plan of government and had adjourned to the second Monday in August.‡ From such information as can now be gathered, it seems that the people were of three minds. Some wanted an independent government. These were the men of New Feliciana. Some were for standing by Ferdinand Seventh. But the great mass of the people were for annexation to the United States.# In this they were heartily supported by the press of Kentucky and Tennessee, which clamored loudly for meetings to express the sentiments of the people. If, said the news writers, the United States does not take West Florida, Great Britain will. And if Great Britain takes it, will the people of these States, of Mississippi Territory, of the Territories of Louisiana and Indiana, stand tamely by and see themselves again cut off from access to the Gulf and from trade on the Atlantic? Those who wished for a separate government drew up and circulated a plan. It was a curious mixture of the Declaration of Independence and the Constitution of the United States, and was intended to be temporary. No laws, no contracts then in force, no officers of the militia, were to be disturbed. But a government, consisting of a governor, a secretary of state, and three councillors of state, chosen by the people, was to be established. All executive power was to be vested in the Governor; all legislative powers in the three councillors, and within three years a convention was to meet at Baton Rouge and frame a constitution.

Mild as this was, it was much too radical, and when the convention reassembled in August the delegates were content to suggest a few reforms, which Delassus approved and prom-

* Democratic Clarion and Tennessee Gazette, August 3, 1810.
† Democratic Clarion, August 17, 1810.
‡ Democratic Clarion, August 24, 1810.
# Democratic Clarion, August 3, 1810.

ised to put into execution. They recommended a provisional government in the name of Spain; courts of justice as much like those of the United States as Spanish law would allow, a militia, land offices, naturalization of aliens, and a printing press under the control of the Supreme Court.

To such a government the men who wished for independence and the men who wished for annexation to the United States vowed they would never submit, and soon had a declaration of independence, a standing army of one hundred and four men, a lone-star flag, a State, a constitution, and a president of their own.

Delassus having failed to carry out the promised reforms, the convention on the twenty-second of September, under pressure from the malcontents, commanded Philemon Thomas to take the Spanish fort at Baton Rouge. Hastily collecting a crowd of boatmen, Thomas hurried to the fort, then defended by twenty half-sick and worthless men under the command of Louis Grandpré. Grandpré refusing to surrender, the Americans stormed the works, and, finding him standing, sword in hand, the solitary defender of his flag, they basely cut him down at the foot of the staff.* Among the prisoners was Governor Delassus. On hearing of the success of their general, the convention declared West Florida a free and independent State,† and bade John Rhea, its president, offer terms of annexation to the United States. The terms he named were that West Florida should be admitted into the Union as a State, or as a Territory, with leave to govern itself, or at least as part of Orleans; that it should be left in full possession of its public lands, and that one hundred thousand dollars should be loaned to it by the United States.‡

The reply of Madison to the offer of annexation was a proclamation taking possession of the territory in the name of the United States and annexing it to Orleans, and an order to the Governor of Orleans to see to it that the proclamation was carried out. Claiborne was then at Washington. But he was sent at once in the utmost haste by the shortest route to Wash-

* September 23, 1810.

† American State Papers, Foreign Affairs, vol. iii, p. 396.

‡ American State Papers, Foreign Affairs, vol. iii, p. 395.

ington, Mississippi Territory. There he was to consult with the Governor of Mississippi and with the commander of the troops, and go on without delay to West Florida and take possession as far as the Perdido in the name of the United States. Once in possession, he was to mark out the bounds of parishes, set up parish courts, organize the militia, and secure to the people the peaceful enjoyment of their lives, their property, and their religion.

Claiborne, thus instructed, rode southward with all the speed he could, and by the end of November was scattering copies of the proclamation through the towns and hamlets of West Florida. The new State had by that time been organized, and for governor had chosen Fulwar Skipwith. To him the action of Claiborne was most offensive. His dignity was insulted. In place of scattering the proclamation broadcast among the people, a copy should first have been brought to him. He accordingly shut himself up in the fort at Baton Rouge, recalled Philemon Thomas, whom he had sent to attack Mobile, and defied Claiborne to do his worst. Having despatched Colonel Pike to Mobile by land and ordered the commander of the gun-boats at New Orleans to go round by sea, Claiborne set off for the seat of disorder. Landing at the mouth of Bayou Sara, he hurried to St. Francisville, raised the flag of the United States, and made a speech to the people. The moment he finished, Thomas, the general of the new State, replied. The Government of the United States, he told the people, had refused protection when protection was needed, and now, when it was not wanted, was seeking to force it upon them. He then denied the claim of the United States to West Florida, declared the proclamation of Madison was a declaration of war, and announced his intention of going to the fort at Baton Rouge and, if need be, perishing in the ruins. Mounting his horse, he then rode away. The challenge thus publicly given was promptly accepted. A messenger was sent to recall the troops marching toward Mobile. Gun-boats were ordered up from New Orleans, and in two days Claiborne entered Baton Rouge. There he at once raised the stars and stripes. But the malcontents gathered in force, tore it down, and ran up the lone-star flag instead. For a while it

seemed not unlikely that force would be needed to restore order. But when the troops and gun-boats appeared, even the fort was quietly surrendered. Elsewhere along the Mississippi the people made no opposition to the new order of things, and when the year closed the flag of the United States was flying in the districts of Baton Rouge, New Feliciana, St. Helena, St. Ferdinand, and Tanchipaho.

Beyond the Pearl all was confusion. There no law had ever been enforced, no order had ever been preserved. The country had therefore long been the resort of deserters from the army, fugitives from justice, and men driven from the States by debt. By these men the rising of the people of Bayou Sara and the founding of the State of West Florida was hailed as the opportunity of a lifetime. Visions of laws of their own making, of plantations of their own choosing, of States of their own founding, rose before them, and, under the lead of Reuben Kemper, they marched against Mobile. The Spaniards drove them back. But the inroad, added to the outbreak at Baton Rouge and to the neglect of his own Government, so disgusted Vincente Folch, the Governor, that, in a letter to the Secretary of State, he offered, if succor did not come from Havana or Vera Cruz before the first day of January, 1811, to give up both Floridas to the United States.* A month was required for the letter to reach Washington. But the moment it came, Madison sent it to Congress, with a secret message in which he made two requests.† He asked for a declaration that the United States could not, unconcerned, see the Floridas pass from the hands of Spain to those of any other foreign power. And he asked for authority to take possession of the province with the leave of the Spanish officials.

When the messenger bearing the confidential message reached the Senate chamber he found the doors shut and the Senate in secret session. The business of the session was the consideration of a bill concerning West Florida. So much of the annual message as related to the occupation of that territory had been referred to a committee, and from the

* Governor Folch to Robert Smith, Secretary of State, Mobile, December 2, 1810.

† January 3, 1811.

committee had come the bill the Senate were debating. One section declared that all the region south of Mississippi Territory, east of the Mississippi river, and west of the Perdido was part of the Territory of Orleans. Another spread over it all the laws then in force in Orleans. Two more sections related to claims and titles to land. The debate which sprang up was long and animated. Speakers on the one side denounced the proclamation as unconstitutional and illegal, as a declaration of war and an act of legislation. A declaration of war because it directed the occupation of the country by a military force. An act of legislation because it joined the country to a territory of the United States, and gave to Claiborne the same authority in West Florida that he had in Orleans. Speakers on the other side defended the occupation of West Florida as an act of prudence, of necessity, of self-preservation. Federalists raised the cry of French influence, compared the respectful treatment of Spain when an ally of France and an enemy to England with the high-handed treatment of her now she was the enemy of France and the ally of England, and pronounced the occupation a piece of robbery. Republicans denied that the proclamation was an act of legislation, denied that the President had assumed the war power, denied that West Florida was not rightfully ours, and taunted the Federalists with having always been under the influence of his Britannic Majesty.

In the midst of the debate came the confidential message, with the letter of Governor Folch. What then took place can never be fully known. Debates in secret session were not always reported. It is enough, however, to know that two weeks later Madison signed a joint resolution and a bill. The resolution set forth that, considering the situation of Spain and of her American colonies, and considering the influence which Florida must always exert on the peace, the tranquillity, the commerce of the United States, it was impossible without alarm to see any part of it pass into the hands of any foreign power; that a due regard for safety made it necessary to occupy the territory; but that the occupation should be temporary and subject to negotiation in the future.

The bill, based on the letter of Folch, authorized the Presi-

dent to take and hold Florida east of the Perdido under either of two conditions. If the local authorities were willing to give it up, or if any foreign power attempted to occupy it, he was to seize it; use, if necessary, the army and navy; expend, if necessary, one hundred thousand dollars; set up a temporary government, and vest the civil, military, and judicial powers in such persons as he thought fit.* Madison appointed General George Matthews and Colonel John McKee commissioners to carry out the law, and ordered their instructions to be made ready immediately.

Thus, while the United States claimed all the Territory from the Mississippi to the Perdido, her authority did not really extend to Mobile. Indeed, there is no reason to believe that our flag could be seen in a single district beyond the Pearl. To the Pearl, however, Congress was not ready to enforce authority, and, by the act authorizing the people of Orleans to frame a constitution and seek admission as a State, the Mississippi, the Iberville, Lake Maurepas, Lake Pontchartrain, and the Gulf were made the eastern boundary of the State of Louisiana. A petition from the Territorial Legislature, asking for the admission of Orleans as a State, had been laid before the House early in the session, and a bill had passed the third reading without much debate. But, when the engrossed bill reached the Clerk's desk and the Speaker put the question, "Shall the bill pass?" the debate opened in earnest.

Whenever a bill is offered for our sanction, said the Federalists, it is proper that we should ask ourselves two questions: Is it constitutional? Is it expedient? If the answer to each question be Yes, our duty is clear, and it must pass. If the answer to either be No, our duty is likewise clear, and we must oppose it. In the case of the bill now before us, a double reason exists for rejecting it, for the only answers we can make are: It is most inexpedient, it is most unconstitutional. By the enacting clause of the Constitution, that instrument was ordained and

* Just before the session closed an act was passed forbidding the joint resolution and the law to be promulgated before the end of the next session of Congress. They were not promulgated till published in the Session Acts of the 15th Congress, ending April 20, 1818. Peter's Statute at Large of the United States, edition, 1847, vol. iii, pp. 471, 472.

established by the *then* existing United States. Neither the men who framed it nor the men who adopted it ever intended to extend its benefits to a people who did not then, or should hereafter, live within the bounds of the United States as defined in the treaty of 1783. Orleans was not within these limits. It cannot, then, be admitted to our Union. If we may extend our limits at all, where is that extension to end? If we may admit States formed from territory outside our constitutional boundary, who can fix the number of such States? Purchase and conquest are not ended. Napoleon may soon have more land to sell. We are at this moment preparing to take West Florida from Spain. Who can say but that in time we may own some of the West Indies, and the whole of South America besides? If so, on the same principle that we form Orleans into a State we may from these new territories make many more new States. What, then, will become of the old States of the Union, the States that first entered into the compact contained in the Constitution, and for whose benefit alone that instrument was made? Their independence will go. Their interest, their welfare, their wishes will be neglected, and they will find that, instead of annexing new States to the Union, they have annexed the old Union to a band of foreign States. The bill again provides that the people of Orleans shall be admitted into the Union on the same footing with the original States. This is impossible. No man can be a senator of the United States who has not been nine years a citizen of the United States. The people of Orleans have been citizens but a little more than seven years. No man can be President of the United States who is not native born, or was not resident in the United States on the day independence was declared. Can the people of Orleans satisfy these conditions? Can a State be said to be on the same footing with the original States when the great mass of her citizens are denied rights the citizens of other States enjoy, when her men can not for years to come have a seat in the United States Senate, and can never, in the whole course of their lives, be eligible to the Presidency?

The speech which threw the House into violent commotion, and was read out of doors with the deepest interest, was made

by Josiah Quincy. He began by declaring that he was second to no man in attachment to the Constitution and the Union. Yet, much as he loved the Union, he could not but feel that, if the bill to admit Orleans passed, the bonds of the Union were dissolved. That the States which composed it were free from their moral obligations. That as it would be the right of all, so it would be the duty of some to prepare for a separation, peaceably if they could, forcibly if they must. Hardly were the words out of his mouth when George Poindexter, the delegate from Mississippi Territory, called him to order. The Speaker, after some debate, declared the point well taken. Mr. Quincy thereupon appealed to the House, and the House, by a vote of fifty-six to fifty-three, sustained him. Continuing his speech, he went on to say that the meaning of the Constitution need not be misunderstood. The origin of it was not concealed by the mists of time, nor hidden by the darkness of unexplored ages. It had been framed within the recollection of every man who heard him, by men still living. It was a political compact, made by "We, the people of the United States." It was made "for ourselves and our posterity," and not for the people of New Orleans, nor for the people of Louisiana. They did not, they cannot, enter into the scope of the Constitution, for it embraces only the United States of America. New States may, indeed, be admitted to this Union. But they must be made from territory within the original limits of the United States. No power has been delegated to Congress to admit foreigners to a share of political power under the compact. The introduction of a new associate will be followed by a new division of power, and a new division by a lessening of the share held by the old partners. Can this be done without unanimous consent? Suppose, in private life, that thirteen men form a partnership, and that ten of them undertake to admit a new partner without the consent of the other three. Would it not be at the option of the three to abandon the partnership after so palpable an infringement of their rights? Does any one suppose that the people of the Northern and Atlantic States will with patience behold senators and representatives from States beyond the Missouri and the Red rivers pour in on Congress, manage as they see fit the affairs of a

seaboard fifteen hundred miles away from their homes, and rule a body into which they have come unconstitutionally? They neither will see it nor ought to see it.

He was told in reply that the bill was perfectly constitutional. He was reminded that the fourth article of the Constitution gave Congress power to dispose of and make all needful rules and regulations respecting the territory of the United States. That power to dispose of territory presupposed power to hold territory, and that power to hold and dispose of it presupposed the power to acquire it. That it could be acquired by conquest under the war powers, or by purchase under the treaty powers. That treaties were the supreme law of the land. That Louisiana had been acquired by treaty; that one of the provisions of the treaty was that the people of Louisiana were to be incorporated into the Union and admitted as soon as possible, and that this provision was not only constitutional, but was also the supreme law of the land, and must be obeyed. When at last the vote was taken, the yeas were seventy-seven and the nays thirty-six. Of the minority, twenty were from the New England States; the rest came from the Atlantic States, every one of them save New Jersey, South Carolina, and Georgia giving at least two votes. The Senate having made several amendments to the bill, to which the House reluctantly agreed, the President promptly signed it.

The bounds of the new State were fixed as the Sabine from its mouth to the thirty-second degree of north latitude, thence due north to the thirty-third degree, eastward along the thirty-third degree to the Mississippi, down the Mississippi to the Iberville, through the middle of the Iberville, Lake Maurepas, and Lake Pontchartrain to the Gulf of Mexico, and along the Gulf to the point of beginning. All free white male citizens of the United States, twenty-one years old, paying a parish tax and dwelling within these bounds, were, on the third Monday of September, to choose delegates to a convention. The convention was to meet on the third Monday in November, and, if it saw fit, frame a constitution and adopt that of the United States. The State Constitution, it was expressly enjoined, must be republican in form, must contain the fundamental principle of civil and religious liberty, and must

secure to each citizen trial by jury in all criminal cases and the privilege of the writ of *habeas corpus*. The convention, it was further required, must, in the name of the new State, renounce all claims to waste and unappropriated land; must promise that no State, no county, town, or parish tax should be laid on land sold by the United States till five years after the day of sale; that the lands of non-residents should never be taxed higher than the lands of residents; and must declare the navigable waters of the State open to every citizen of the United States, without any tax, duty, impost, or toll whatever. The United States, on the other hand, promised that of the net proceeds of land sold after the first day of January, 1812, five per cent. should be expended in building roads and levees.

While the President was writing his name at the foot of this act, bills to recharter the Bank of the United States were rejected by both the Senate and the House, and, as the charter required, the Bank went out of business on March fourth, 1811. That such an institution, after such a long and prosperous career, should, at such a moment, have been destroyed is a complete commentary on the financial and economic notions of the day. But the causes which led to its overthrow were all but irresistible. The enemies of the Bank were made up, on the one hand, of a large number of old Republicans, who had never forgotten the arguments in use in 1791, who still denied the right of Congress to charter any corporation, who still asserted that a bank charter could not constitutionally be granted, and who still described the Bank as a monarchical institution, as an instrument of despotism, as a many-headed monopoly, as a lingering and oppressive remnant of that strongly centralized government the Federalists had set up, and which the Republicans were in duty bound to destroy. With them in their opposition were joined two other classes of more recent date: the men who, affecting the guise of earnest patriots, complained that the Bank was in the hands of Englishmen; that two thirds of the capital stock was owned in England, and that large dividends which ought to remain in America were every year drawn over to London; and the men who, excited by these dividends, longed for the winding

up of the Bank and its branches, in order that the business it did might be shared by State corporations.*

Of late years the number of these institutions had increased to a surprising extent. On the fourth of July, 1791, when the books of the United States Bank were opened at Philadelphia, there were but three in existence. But the establishment of a permanent and vigorous government, the creation of public credit by the transmutation of the old Congress lottery certificates, loan-office certificates, interest indents, commissioner's certificates, army certificates, final settlements, continental money, all the worthless remnants of the financial makeshifts of the Confederation into stock, bearing interest and selling at a premium, had called out from the old stockings, the strong-boxes, the garret floors, much of the hidden capital of the people. A period of wide-spread speculation followed, and in that period subscribing to the capital stock of a bank became as favorite a way of investing money as subscribing to the stock of a company to build a turnpike or dig a canal. Six new banks were chartered in 1792, and, in spite of the head-shaking of prudent men, did a large business and paid out each year great sums in dividends. Eagerness to share this success produced others, and these too, in spite of prognostication of failure, grew prosperous and rich. War had broken out between France and England. The markets of the West Indies were for the first time opened to our merchants. Trade instantly revived and developed to an extent which then seemed fabulous. Demands for discounts and capital with which to build ships, to buy produce, to move produce to the seaports, surpassed the ability of the banks to meet them. Their profits were immense. Eagerness to share them was again excited, and with the new capital created by

* The controversy, as usual, called out a host of pamphlets and newspaper essays. The fiercest of the anti-bank essays are in the Aurora for January and February, 1811. The pamphlets are "Bank Torpedo, or Bank Notes proved to be Robbery." By R. Davis. "Desultory Remarks upon the Ruinous Consequences of the Non-renewal of the Charter of the Bank of the United States." By M. Carey. "Considerations on the Approaching Dissolution of the United States Bank." By Jesse Atwater. "Nine Letters to Dr. Adam Seybert, Representative from Philadelphia to Congress." By M. Carey. "Paragraphs on Banking." By Erich Bollmann.

the trade more banks were founded. And now they began to move from the seaboard inland, and to spring up in places where, five years before, such institutions had never been thought of. In 1795 the number was twenty. By 1800 it had risen to twenty-seven. Five years later sixty-four are known to have been doing business, and these in 1810 had been increased to over one hundred and three.

The charge was often brought against these banks that they did business in a reckless, law-defying way, favored political friends, gave credit to men who did not deserve it, and issued notes far in excess of their ability to redeem. That many of these things were done is undoubtedly true, but that any serious over-issue of notes took place may well be questioned. Indeed, the chief cause of the deadly hatred which many of the State banks felt for the Bank of the United States was the vigilance with which it watched their issues and the incessant calls it made on them to redeem. Of all arguments used by the State banks to excite animosity against the United States Bank, this seems to have been the most powerful and the most common. If a customer applied to any of them for a discount or a loan it was not safe to make, the blame was laid on the vulture, on the hydra, on the Cerberus, which, by enjoying the sole right to receive Government money, kept thousands of dollars out of their strong-boxes, and, by constantly presenting bills for redemption, forced them to keep in their strong-boxes thousands more they would gladly loan. Even such as were accommodated went away feeling sure that better terms could have been made had it not been for the harsh manner in which the State institutions were treated by the Federal monster.

The friends of the Bank, on the other hand, labored hard to explain the evils that would surely attend its downfall. It was true, they admitted, that the deposits in the State banks would be greatly increased and their business proportionately enlarged. But it was also true that the capital of the country would be reduced by the millions of specie sent to England to buy back the stock which Americans—nay, which the Government of the United States—had deliberately sold to the Barings of London; that the rate of exchange between distant

cities would go up very considerably, because no other bank had branches in all the chief cities from Boston to New Orleans; and that the circulating medium of the country would be severely contracted by calling in the five millions of dollars of bank notes passing current from the district of Maine to the Territory of Louisiana.

The enemies of recharter, well knowing that much would be made of this last argument, determined to destroy it by inflating the currency and thus preventing the evils a contraction was expected to produce. Congress, therefore, had not been many hours in session—indeed, the President's message had not been read—when Senator Smith, of Maryland, gave notice that he would on the morrow ask leave to bring in a bill to suspend a certain section of an old law. The law had been enacted in 1793, and in the course of the seventeen years which had since elapsed the section in question had been sometimes on and sometimes off the Statute-book. It provided that, three years after the day whereon the first gold coin and silver coins were struck at the Philadelphia mint, the coins of foreign nations, the Spanish milled dollar and its parts alone excepted, should cease to be legal tender for debts in the United States. The day came in 1797. But the output of the mint was not large enough to enable the merchants to pay their custom dues, and in 1798 the section was suspended for three years to come, only to be again suspended in 1802 and in 1806. Since 1809 it had been in force.

To the people it made little difference whether the coins were legal-tender or were not legal-tender money. They were seen everywhere, were used everywhere to discharge debts, and were taken by the banks at certain rates which were posted in the coffee-houses, in the exchanges, in the inns and taverns, or hotels as they were now called, and were from time to time printed in the newspapers and the almanacs. Practically the law was a dead letter, yet it might be enforced, and, lest it should be, and all the blame for a contracted currency be laid on the opponents of recharter, Smith brought in his bill to once more suspend the section. The measure was popular. The friends of the Bank were most anxious to arouse as little animosity as possible, and gladly sent the bill on to the House.

There for the first time the effects of such a law were carefully examined. The committee having the bill in charge consulted the Secretary of the Treasury, and reported that they heartily approved the plan and heartily disapproved of the manner in which it was to be carried out. No one could doubt that the circulating medium of the country was wholly inadequate to the ordinary purposes of domestic exchange. No one could doubt but that, if the Bank of the United States was not rechartered, the currency would be still less equal to the demands of trade, and that the just sphere of mercantile action would be yet more limited. This ought not to be allowed. No statute tending to produce such a condition of affairs should be suffered to stand, and the committee were therefore in favor of making foreign gold coins current money and legal tender for debts. But, should the law of 1793 be suspended, as the Senate proposed, the law of 1806 would be revived; and should the law of 1806 be revived, the gold coins of Spain would pass at four per cent. above their real intrinsic value. Every man, in other words, who was compelled to receive these coins in payment of a debt would, in fact, be compelled to receive ninety-six instead of one hundred cents on every dollar paid him. The effect of thus putting a particular coin in circulation at a rate higher than its true value would be that every man who had a debt to pay, every bank that had paper to redeem, would henceforth make payment in Spanish gold coin; a heavy importation of the debased money would follow, bank paper would depreciate, and coins whose true value and whose legal value were the same would quickly disappear from circulation. The committee urged the House not to do this, and recommended that all the Senate bill after the enacting clause be stricken out and a new bill, framed on honest principles, be inserted. By a joint vote of four to one the House passed such an amended bill and sent it back to the Senate. But Smith and his friends recognized the handiwork of Gallatin, refused to accept the amendments, split their party, and succeeded in putting off consideration of the bill till the first Monday in June. But Congress must rise on the fourth of March. The Senate by this action declared, therefore, that it would no longer consider the matter. To this mind the

senators were easily brought, for the representatives were at that very moment hotly debating the question of rechartering the Bank. It was well known that the vote would be close. Both parties were therefore loath to provoke a quarrel with the House by a summary rejection of its Foreign Coinage Act, lest that rejection should cost them votes on a matter of far greater importance.

The contest over the Bank began in the Senate with the reading of a memorial from the president and directors. The memorial asked for a recharter, dwelt at length on the services and usefulness of the institution to merchants, to traders, to the State banks, to the Government, and was sent to a select committee to report. Before the committee was ready to report, other petitions followed. They came from the Columbian Insurance Company and the Ocean Insurance Company at New York, from the Baltimore Insurance Company, from the Master Mechanics of Philadelphia, from citizens of Philadelphia, citizens of Kentucky, citizens of New York, the Bank of New York, and the Chamber of Commerce of Philadelphia. One only was sent in by the opposition, and that bore the signature of people living in Pittsburg. Such as were in favor of recharter reminded Congress that it was about to do an act on which depended the financial prosperity of hundreds of thousands of business men. The hour was a critical one. Many things had conspired to make it a time of distress, of embarrassment, of great pecuniary losses. The aggression of foreign powers on our neutral rights, the sequestration of our ships and cargoes, the hindrances which in every quarter of the globe beset our commerce, had stripped the merchants of their usual resources. Never had there been a time in the history of the country when the demand for money had been so great as at that moment. The State banks had gone to the very limit of safety, in hopes of relieving the distress. The Bank of the United States, though its charter was in danger, had forborne to reduce its loans, lest it should aggravate the distress every one else was seeking to alleviate. But, should Congress refuse a renewal of its charter, the Bank must call in its loans, the merchants and the State banks must be pressed yet harder, and near seven millions of specie sent abroad to

redeem the stock held by Englishmen. Seeing this general stringency, the people would lose faith, first in the banks and then in each other. All credit would vanish, and such a period of financial ruin would follow as the country had never known.

With the petitions from Philadelphia came delegations representing the merchants, the manufacturers, the carpenters, the ship-builders, the rope-makers, the curriers of leather—all of whom gave testimony before the committee. One rich manufacturer of tobacco, in whose works were employed one hundred men and whose daily pay-roll was one hundred and sixty dollars, told the committee that the stoppage of the Bank would produce such scenes of distress in Philadelphia as it was harrowing to contemplate; that already credit was shaken, and that money, even for a short time, could not be had on the best security. Another, a master ship-carpenter, displayed a list of nine thousand one hundred and forty-five tons of shipping then on the stocks, assured the committee that this work gave a livelihood to two thousand men, that the capital thus invested was largely obtained on notes discounted by the Bank of the United States, and that should that institution be discontinued, every ship would instantly be abandoned and every ship-carpenter forced to emigrate to Canada in search of bread. A house-carpenter knew of five hundred brick houses then going up in the city. Three hundred belonged to mechanics who had borrowed the money to build, and who, in the event of the refusal of a charter, would be in dire distress or ruin. Yet another, who annually turned a hundred tons of hemp into rope, declared that of late times and credit were so bad that he could make no sales. Hemp, which a year before brought three hundred and fifty dollars a ton, could not now find a market at two hundred. A currier complained that he could not carry on his business, for such was the financial condition produced by the fear of a dissolution of the Bank that he could neither collect old debts, sell new stock, nor get a discount under two per cent a month.

Believing these warnings of disaster to be well founded, the majority of the committee reported a bill to amend and continue in force the old charter of 1791. The new bank was to pay a bonus of a million and a half, allow interest on all

Government money above one million dollars deposited for more than a year, and have no voting stockholders who were not citizens of the United States. The former pledge that during the life of the charter no other bank should be created by Congress was not to be renewed.

With all that was said by the many speakers in the long debate which now followed we need not, most happily, concern ourselves, for there were then in the Senate two men—one supporting the affirmative and one the negative side—whose later careers give to their remarks on that great question an interest of no common kind. The one was William Henry Crawford, of Georgia. The other was Henry Clay.

Crawford was chairman of the committee, and, in response to repeated calls for the reasons why the bill was reported, rose and said: "Mr. President: It is contended by those who oppose the passage of this bill that Congress can exercise no power by implication. Let us, sir, take a view of the Constitution on this supposition and see how the exclusion of power by implication can be reconciled to the most important acts of Government. The Constitution has expressly given Congress power to set up tribunals inferior to the Supreme Court, but it has nowhere expressly given Congress power to establish a supreme court. By the exercise of a right existing only by implication, Congress has organized a supreme court, and then, as incidental to power existing only by implication, has passed laws to punish offences against the law by which the Court has been created. Sir, the right of the Government to accept the District of Columbia exists only by implication. The right of the Government to purchase or accept of places for the erection of forts, magazines, arsenals, dock-yards, exists only by implication. The power expressly given by the Constitution is that of exercising 'exclusive legislation' over such places. The right to accept or purchase is nowhere expressly granted. In the same way, according to the construction given to other parts of the Constitution, power to incorporate a bank may be regarded as incidental to power to lay and collect taxes, duties, imposts, and excises, and to pass all laws necessary and proper to put these powers into effect. It is true that a law to found a bank is not a law to lay or collect

taxes, duties, or imposts. Neither is a law to build a light-house a law to regulate commerce. Yet, as incidental to the power to regulate commerce, Congress puts up light-houses, because they facilitate and promote the security of commerce. In the same way Congress may charter a bank, because it will facilitate the collection of the revenue, the safe-keeping, the easy and speedy transmission of public money. It is necessary and proper, therefore, to enable the Government to carry into complete effect the right to lay and collect taxes, duties, imposts, and excises.

"But it is said that the States have reserved to themselves the exclusive right of erecting banks. That they have exercised this right is not to be denied, but that they have the right at all is very questionable. Permit me, sir, to examine this exclusive right. In the tenth section of the first article of the Constitution it is declared that no State shall coin money, emit bills of credit, or make anything but gold or silver legal tender for debt. What, sir, is a bill of credit? Will it be contended that a bank bill is not a bill of credit? It is emphatically a bill of credit. It may be said that the States, by the creation of banks with authority to issue bills of credit, do not violate the Constitution, because they do not emit the bills themselves. But, sir, according to the maxims of law, what they do by another they do themselves. The banks derive their authority from the States. The States have no such authority to delegate. How, then, can the States charter banks?

"But, not content with the exercise of an usurped authority, the great States are by usurpation attempting to legislate for Congress. Was it not said, when three great States instructed their representatives to vote against the Bank, that after such an expression of opinion Congress ought not to think of acting? And what, sir, induces these States to wish to put down the Bank of the United States? Avarice. They have erected banks in which they hold stock, and now seek to compel the United States to use these banks as places of deposit for public money."

Two of the States thus charged with usurpation of power, with avarice, with a longing to see their banks in possession of the public money, were Pennsylvania and Virginia. The

senators from each now vigorously repelled the charges and read to the Senate the instructions they had received. Those from Virginia declared the original charter to have been an unconstitutional act, denied that Congress had power to renew it, and asserted that an attempt to renew it would be a dangerous encroachment on the sovereignty of the States.* Those from Pennsylvania are of interest, as that great Commonwealth for the second time affirmed, nay, used the very language of the Kentucky resolution of 1798.† The debate now became general, and senator after senator set upon Crawford to tear his constitutional argument to pieces. All were able men. But the arguments of Henry Clay have for us an especial interest. He laughed at the idea of the Bank giving any real aid in the collection of taxes. He scoffed at those who believed it to be useful as a depository for public funds. He declared that the operations of the Treasury could be carried on just as well without the Bank as with it. He spoke at great length on the constitutionality of recharter.

"What," said he, "is the nature of this Government? It is emphatically federal, vested with an aggregate of specified powers for general purposes, conceded by existing sovereignties, who have themselves retained what is not so conceded. It is said that there are cases in which it must act on implied powers. True. But the implication must be necessary, must

* Passed by the General Assembly, January 22, 1811. Annals of Congress 1810–'11, p. 201.

† The language of the first paragraph is: "The people of the United States, by the adoption of the Federal Constitution, established a General Government for special purposes, reserving to themselves respectively the rights and authorities not delegated in that instrument. To the compact thereby created each State acceded in its character as a State and as a party; the United States forming, as to it, the other party. The act of union, thus entered into, being to all intents and purposes a treaty between sovereign States. The General Government, by this treaty, was not constituted the exclusive or final judge of the powers it was to exercise; for if it were so to judge, then its judgment, and not the Constitution, would be the measure of its authority.

"Should the General Government, in any of its departments, violate the provisions of the Constitution, it rests with the States and with the people to apply suitable remedies." The resolutions then go on to assert that Congress cannot create a corporation within the limits of a State without its consent.—Journal of the 21st House of Representatives of the Commonwealth of Pennsylvania, January 11, 1811.

obviously flow from the enumerated power with which it is joined. The power to charter corporations is not specified in the grant, and, I contend, is of a nature not transferable. It is one of the highest attributes of sovereignty. To deduce it from power to levy and collect taxes is to lay prostrate all relation between principle and incident. As well might it be said that the great luminary of day is an accessory, a satellite to the humblest star that twinkles forth its feeble light in the firmament of heaven.

"And what is the character of the corporation this bill is to set up? It is a splendid association of favored individuals taken from the mass of society and invested with exemptions and surrounded with immunities and privileges. Now, I contend that the States have each power to regulate contracts and to declare who shall and who shall not make them. If, then, Congress may violate State rights and confer on a bank power to make contracts, may it not go further and, in contravention of State rights, give power to make contracts to slaves, infants, and *femes couvert?* I contend that the States have exclusive power to provide as to the extent of responsibility of debtors and their creditors. But if Congress may say that men, when associated, shall be responsible for their debts only in a limited degree, why may it not extend this privilege to men when they are not associated? Where is the limitation on this power to set up corporations? You establish one in the heart of a State with money for capital. May you not set up others, with land, with slaves, with personal estate as capital, and so absorb all the property within the jurisdiction of the State? The Bank contends that no State can tax it. If this pretension be well founded, it is within the power of Congress, by chartering corporations, to dry up the whole source of State revenue." He ended with a fine burst of rhetoric, in which he broke down the argument that it was a good thing to have Englishmen own seven tenths of the stock of the Bank, as it gave us influential friends in London.

The debating now ran on for five days. Crawford then closed it in a speech in which he answered Clay, and, judged by the position of Clay five years later, answered him completely. Indeed, the palm belongs to Crawford. Of all the

senators who spoke in that debate, he alone displayed a clear perception of the constitutional, the financial, the economic interests at stake. When he had finished, the vote was taken on the question of striking out the first section of the bill. As this section provided for continuing the charter for twenty years, the fate of it would determine the fate of the bill. Every member of the Senate was in his seat, and when the last name on the roll was called, seventeen were found to have answered Yea and seventeen Nay. It then became the duty of the Vice-President to give the casting vote, which he did in favor of the yeas.* As the House, about a month before, rejected a similar bill by a vote almost as close,† all hope of a recharter was abandoned.‡ One of the seventeen who voted for a renewal of the charter was Richard Brent, of Virginia. The Legislature of his State had expressly enjoined him to vote No. But he saw fit to disobey, and the next Legislature condemned his conduct heartily. No man, the report explained, could be so exalted as to excite the resentment of the Assembly of Virginia. That would be unworthy of its dignity and honorable to the object of its wrath. Underlying the behavior of the senator, however, was a great principle of republican government concerning which it was high time that the sentiments of Virginia should be known. Briefly stated, these sentiments were that the Legislature had an undoubted right to instruct senators on all matters constitutional or political, and that henceforth no man ought to accept the appointment of senator who did not hold himself bound to obey such instructions.#

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* February 20, 1811. † January 25, 1811. Yeas, 65; nays, 64.

‡ After the refusal to renew its charter the Bank applied for an extension of time, in order to wind up its affairs. This also was refused. Trustees were then appointed, and June 1, 1812, a dividend of 70 per cent. was paid; October 1, 1812, 18 per cent. more was distributed; on April 1, 1813, 7 per cent., and 5 per cent. on April 1, 1815, and December 1, 1817. Regarding the Trust, see Proceedings of the Stockholders of the Bank of the United States Preparatory to the Creation of a Trust for closing out the Concerns of that Institution, Philadelphia, 1811.

The report made to the Assembly on that occasion is the most careful and elaborate discussion of the right to instruct yet made to any legislative body. It fills ten pages of the printed Laws of Virginia, and deserves to be read by every student of our history.

Having thus, on the eve of war, destroyed the Bank, contracted the currency by five millions and thirty-seven thousand dollars, sent seven millions of specie abroad, and put up the price of exchange between every city and town in the country, Congress now went on to cut down the revenue by means of a new restriction on commerce.

The proclamation of the President had fixed the second of February as the day on which all intercourse should cease with Great Britain unless she should before that date revoke her orders in council. As the time drew nearer and nearer and no word of their recall came over the ocean, it began to be said openly that the country had now drifted to the very brink of war. That Madison had been too hasty; that his proclamation did not state facts; that Napoleon had not revoked the decrees of Berlin and Milan; and that England would not recall her orders, was apparent to every man who chose to take a cool and impartial view of our foreign relations. What, it was asked on every hand, shall we do? Shall the Non-intercourse Act be suffered to go into force against Great Britain? If so, will she not at once retaliate, nay, strike back with a declaration of war? The House Committee on Foreign Affairs took the ground that the President should be supported, waited till they could wait no longer, and then increased the embarrassment by presenting a bill. It was to supplement the law of May first, 1810, which revived nine sections of the act of March, 1809. From and after February second not a ship, not a vessel sailing under the flag of England and owned, wholly or in part, by a subject of King George, was to enter the waters of the United States. On and after that day the custom-houses were to be shut to English goods, wares, and merchandise coming from any port or place in the possession of Great Britain. On and after that day it became unlawful to bring goods of English make from foreign ports, and goods of foreign make from English ports, to any place in the United States. The purpose of the bill, in short, was to establish total non-importation with England till such time as the President should by proclamation declare that the orders in council had been recalled.

The House, however, was still for delay. The next ship

that came in, the next packet of letters to the British Minister, the next London newspaper, might bring the news so long desired. Having heard the bill read twice, the House therefore sent it to the Committee of the Whole, and for nearly three weeks it lay on the Speaker's table. But delay was useless. The packets when they arrived brought either no intelligence or intelligence of a most disheartening sort. November first, 1810, was the date on which, had Napoleon been an honest man, a decree should have issued revoking those of Berlin and Milan. But the letters and newspapers which reached this country in December made no mention of any such decree. Had Napoleon been a prudent man he would at least have refrained after November first from enforcing those decrees. But letters written at Bordeaux in the middle of December announced that two American ships had been seized at that port for coming in without French licenses. Madison stated this fact to Congress on the last day of January.* Not a man who heard the message read ought one moment longer to have doubted the utter faithlessness of France. The majority of the Committee on Foreign Relations, to do them justice, did not doubt it, and instructed their chairman to move the recommitment of their bill. For nearly three weeks past it had been lying neglected on the Speaker's table. But on the second of February the chairman, reminding the House of the day and the event, made the motion for recommitment. The conduct of France was such that he could find no excuse for non-intercourse with England. It would be better to suspend the old law and provide for the relief of our citizens than to pass a new one.

As luck would have it, John Randolph was in the House, and, always ready to embarrass Madison, he moved, as an amendment, that the committee be instructed to bring in a bill repealing the act of May first, 1810. A long debate followed. What, asked the men who opposed the motion, are we asked to do? We are asked to repeal the law of May first last. What does this law do? It provides, in the first place, for the exclusion from our ports of the armed ships of for-

* American State Papers, Foreign Affairs, vol. iii, p. 390.

eign nations, and, in the second place, it makes to both France and England an offer embracing a promise. By it we said to Great Britain, Recall your orders in council, and we shut every article of French manufacture from our markets. By it we said to France, Recall your decrees, and we will exclude every sort of British merchandise from our ports. By it we said to both England and France, If either of you do not revoke your restrictions we will, against the one neglecting so to do, enforce nine sections of the Non-intercourse Act of March, 1809. England neglected the offer. France accepted it, and sent us word that, after November first, the decrees of Berlin and Milan would cease to have effect. This fact the President made known to the world, and gave England three months' grace. At midnight of this day the time of grace expires. What, then, is the duty of this Government? Why, undoubtedly, to fulfil with good faith the promise made to France. On this day the law of May last, the law we are asked to repeal, becomes a national compact between France and the United States. That compact may now seem impolitic, untimely, harmful; but it is a compact solemnly and deliberately made, and must be carried out.

The answer made to this argument was a flat denial that a compact existed. We did, indeed, it was said, promise to do certain things. But our promise was conditional. It was not to be binding unless France, on the first of November, repealed her decrees. Has she repealed them? Most certainly not. Is there not now lying on yonder table a letter which tells us that, about December first, the brig New Orleans Packet from New York and the schooner Friendship of Baltimore were seized by the collector of customs at Bordeaux? The Berlin and Milan decrees are not repealed. The condition on which our promise was to go into effect does not exist. Our faith is not pledged to execute any compact.

After all who wished to speak had been heard, the Speaker put the question, and the Clerk announced that the nays had it by a vote of sixty-seven to forty-five. The bill was then recommitted by an almost unanimous vote.* Next day a new

* Yeas, 82; nays, 9.

bill was reported, providing that no vessels, owned wholly by a citizen of the United States, which left a British port prior to February second, 1811, and no goods coming in such vessels and owned wholly by citizens of the United States, should be seized under the sections of the Non-importation Act revived by the President's proclamation. Twice the House went into a Committee of the Whole to consider it.* But the report was now spread about that Serurier, the new French Minister, would soon arrive, and the House, only too glad to get rid of a matter concerning which they did not know what to do, refused the committee leave to sit again, and waited patiently for the Minister to come. He came a few days later, and on the morning of February seventeenth had his first interview with the Secretary of State. That afternoon the Cabinet met, in high hopes, to hear what Smith had to report. They might as well, however, have been spared the trouble, for the Secretary could report nothing but failure. Not one particle of evidence did Serurier furnish that the decrees were repealed.

Madison was determined to believe that they were, and, to the end that this belief might be forced on Congress, he gathered up and sent to the House† two French documents‡ which had recently come to hand. One was a letter from the Minister of Finance to the Director General of Customs, instructing him to no longer enforce against American ships the decrees of Berlin and Milan. The other was a letter from the Minister of Justice to the President of the Council of Prizes, and informed him that in future American vessels should not be judged under the decrees of Berlin and Milan, but should be sequestered till February second, 1811. If the United States then fulfilled her engagement with France, the sequestered vessels should be set free.

To present such documents as conclusive evidence that the decrees had been repealed was bold. But Madison well knew that his party would support him, and his party, in order to support him, completely revolutionized their methods of busi-

* February 6th and 9th.

† February 19th.

‡ Each was dated December 25, 1810. American State Papers, Foreign Affairs, vol. iii, p. 303.

ness. The first step toward this revolution was taken * when the chairman of the Committee on Foreign Relations moved to amend his bill by adding two more sections, reviving the Non-intercourse Act of 1809. The next step was taken when the Committee of the Whole sent the amendments to the House and the House began debating them. It was now the twenty-sixth of February. Before midnight on the third of March Congress must adjourn. Time being short, the minority attempted by every means in their power to hinder, to delay, to prevent a vote. One who was present during that exciting debate declares that on the first day the House sat eighteen hours. Every expedient to delay a vote was resorted to by the minority. All day long, from the beginning of the session in the morning till late in the evening, speech after speech was made for no other purpose than to consume time. At half past ten at night a motion to adjourn was lost, and the tactics of the minority immediately took a new form. No sooner would one of their party obtain the floor and be well on in a long and tiresome speech than a number of them would rise, quit the chamber in a body, and leave the House without a quorum. The speaker would then be interrupted by a motion to adjourn. The majority would vote No, the motion would be lost, and the speaker go on till he was tired. Some other member of his party would then follow him, for the majority were determined to keep silence and give the minority no aid by taking part in the debate and so consuming time. These scenes were repeated at a quarter past eleven, at twelve, and at a quarter to one o'clock. A motion was then argued for a compulsory process to compel members to attend. The argument on the one hand was that it was cruel to drag members from their beds at such a time of night, at such a season of the year, on business which ought not to be hastily decided. The argument on the other hand was the urgency of the business and the evident intention of the minority to delay and defeat the bill by deliberately destroying the quorum. The motion was lost. So also were others to adjourn made at half past one and at two,

* February 21st.

when the motion to compel the attendance of members was renewed. A quorum being present, it was carried, and at twenty minutes past two the door-keeper was despatched in search of the absentees. While the door-keeper was gone other members of the minority left, so that it was ten minutes past three when a quorum was again secured. Thereupon one of the minority immediately slipped out, and at half past three a call of the House showed seventy-one members present. This was one less than a quorum. Motions for a compulsory process were now again made. But the Speaker decided that no such process could be issued unless a quorum were present, and the majority, convinced that a quorum could not be had, gave way and adjourned.

Next morning at half past ten the session was resumed and another day wasted. Again the majority kept silence. Again the minority consumed the time with useless speeches. About candle-light the House adjourned till six o'clock. Promptly at that hour the Speaker took the chair, and John Randolph opened an all-night session with a motion to postpone further consideration of the bill for two days. This being voted down, he moved to postpone for one day. What followed has been termed a debate. It was in truth an uncontrollable outburst of wrath long pent up. John W. Eppes, chairman of the Committee on Foreign Relations and a member from Virginia, accused Randolph of seeking to delay and defeat the bill. Randolph, excited by liquor, gave Eppes the lie direct, and the whole House was in a furor. The Speaker rapping with his gavel on the desk, the members springing to their feet and shouting "Order," "Order," from every part of the chamber, the angry tones and menacing gestures of the two Virginians, made a scene such as the House had rarely witnessed. When order was at length restored, Eppes sat down and wrote a challenge. Randolph instantly accepted it, and left the room to make arrangements with his second.

Six hours were now wasted in making long speeches, in offering innumerable amendments, motions to adjourn, and in taking the yeas and nays six times. About half past two in the morning, section two of the bill being under debate, a member called for the reading of so much of the Non-inter-

course Act of 1809 as section two would revive. The Speaker having stated the question, Barent Gardenier, of New York, began to discuss it. As his speech gave promise of great length, William Gholson, of Virginia, cut him short by calling for the previous question on the motion for reading the sections. The previous question was put and carried in the affirmative, and Gardenier had begun to debate the main question, on reading the sections, when Gholson again stopped him, called him to order, and claimed that, the House having decided the previous question in the affirmative, debate was not allowable. The Speaker ruled that it was.* Gholson appealed, and the House reversed the ruling of the chair. This ended the struggle. With their new implement of parliamentary fence the majority struck down and silenced the minority, and at five o'clock in the morning passed the bill. Both the Senate and the President heartily approved, and, March second, it became law.

Some months later, when the twelfth Congress was considering the report of its Committee on Standing Rules and Orders of Proceeding, the expediency of this rule was questioned. An amendment was then offered that when the previous question had been decided in the affirmative, and the main question had been put, every member who had not already spoken should have leave to speak once. This is not a mere contest, said the supporters of the amendment, between the majority and the minority for power. It is a contest for the liberty of speech. Freedom of speech and freedom of debate are sacred to the Constitution, and to deny the privilege of speaking at all is to overthrow the first principles of our Government. What are we sent here for but to deliberate, to speak, to debate? Deliberation is the very life-blood of a legislative body. This right does not belong to the body, nor to any

* The Speaker decided that, according to the late practice of the House, it was in order to debate the main question after the previous question had been taken. He said that this practice had been established by the House by a decision two years ago, in opposition to an opinion which he himself had always entertained, and had then declared. His decision on that occasion was reversed, and he felt himself bound by that expression of the sense of the House."—Annals of Congress, 1810–'11, p. 1092.

portion of the body, but to each individual forming the body. The body has power to control and regulate its exercise, but not the power to take away that right altogether by the operation of a general rule. An individual, therefore, may be set down for abusing the right of debate. But whenever a legislature assumes to itself the power of stopping all debate at any stage of deliberation, it assumes a power wholly inconsistent with freedom of speech, and ruinous to a great principle of civil liberty. We are here not as men, but as representatives. It is not in our majesty, but in the majesty of our constituents that we come, and we claim the right to be heard at all times, not because it is our right, but because it is the absolute and inherent right of the people who send us. The majority answered that the Constitution gave the House power "to determine the rules of its proceedings," and by a vote of seventy-six to thirty-six repealed the amendment.

Thus was firmly established in congressional procedure the rule of the previous question; the rule which centralizes power in the hands of the majority, which cuts off debate, which stifles the voice of the minority and deprives it of the greatest of the few privileges which in our system of government it properly possesses. It is, indeed, a fundamental principle of government by the people that the majority shall rule. But it is likewise a fundamental principle that the majority shall be fair and just, that it shall not be tyrannical, that it shall not do acts merely because it has the power. Yet it is precisely such arbitrary acts that the rule of the previous question enables the majority to do. On the February day when it was adopted congressional government suffered a great revolution. Since that day Congress has steadily become less and less of a deliberative body and more and more a body whose duty is to register the decrees of the majority.

The bill, passed in this arbitrary way, provided that American ships and cargoes leaving British ports prior to February second should not be confiscated; that when the President proclaimed the orders in council revoked, the proclamation should be evidence of the revocation, and no court should admit any other; and that, until such a proclamation issued, nine sections of the Non-intercourse Act of 1809 should be in force. Noth-

ing in these sections forbade American goods going to England. It was on British wares and merchandise that the restriction was laid, and, as they could no longer be imported, many millions of annual revenue were lost to the Treasury. The deficit must be made up. But Congress would not increase taxation. In the batch of bills, therefore, which Madison signed on March second, was one authorizing him to borrow five millions of dollars. At midnight, on Sunday, the third of March, the eleventh Congress ended its sitting.

The fruit of that stormy session was thirty-seven public acts. Compared with the work now done by a Congress, this showing seems small indeed, for it is now no uncommon occurrence for either House to have on its calendar ten thousand bills, and for a Congress to put on the statute book four hundred public acts. Yet the eleventh Congress is memorable in our history as that which passed Macon's Bill No. 2, which destroyed the Bank, which revived non-importation with England, which established the rule of the previous question, and reduced the Government to a state of imbecility to which it did not again descend for fifty years. For this state of affairs Madison was chiefly responsible. At a time when his councils should have been all harmony, when his measures should have been all vigor, when his position on matters both foreign and domestic should have been carefully chosen and firmly held, all was weakness, factiousness, uncertainty, and doubt. A faction, a cabal, small in numbers, small in ability, without a leader, and without any concerted plan, completely ruled him. He was, as Randolph truly said, "President de jure." * It was William Duane and Michael Leib, the brothers Robert Smith and Samuel Smith, and William Giles that determined who should sit in the Cabinet, who should sit on the Supreme bench, who should be ministers at foreign courts, what administration measures should be passed and what should be defeated. Madison was now at the middle of the term for which he had been elected, yet he was as docile, as submissive to the dictates of the cabal, as indifferent to the ruin toward which they were driving him, as he could

* Life of Gallatin. Henry Adams, p. 430.

have been had he meant to go on in the same course for the two years of rule which still remained to him. From such a fate he was saved by Gallatin, the only able man, the only indispensable man in the Cabinet. During two years the Secretary had watched with patience the feebleness, the perplexity, the utter inability to decide and act which marked the conduct of Congress and for which the cabal was largely to blame. But with the ending of the eleventh Congress his patience gave way and he tendered his resignation.*

Brought to a pass where he must do something, Madison now acted promptly and wisely. He determined to retain his Secretary of the Treasury and refused to accept the resignation. He determined to dismiss his Secretary of State, and asked Gallatin to find out if James Monroe would take the vacant place. Gallatin applied to Richard Brent, a senator from Virginia. Brent wrote to Monroe; † Monroe consulted his friends, and was by them advised to accept.‡ He had much reason to hesitate and seek advice, for he had, but a few weeks before, condemned the administration and declared he feared a crisis, and had described the policy of Madison as one of "improvident and injudicious measures." But his friends assured him that his duty was to accept. The offer of Madison was a sure sign of a wish to get rid of the cabal, and if he did not profit by the opportunity, some one else, perhaps John Armstrong, would. In a little while, therefore, Brent assured Gallatin that Monroe was willing to become Secretary of State.

Thereupon Madison sent for Smith and began the unpleasant task of asking him to resign. Madison told him plainly that he was not able to perform the duties of his high office, that he was not punctual, that he was not systematic, that out of doors he opposed and counteracted measures which he had seemingly approved in the Cabinet, that it was notorious that the administration of the Executive Department labored under a want of harmony and unity which was charge-

* Life of Albert Gallatin. Henry Adams, p. 434.

† Richard Brent to James Monroe, March 7, 1811. Monroe Manuscript, State Department, Washington.

‡ John Taylor to James Monroe, March 24, 1811.

able solely on him, requested him to retire, and offered to appoint him Minister to Russia. John Quincy Adams then held that post. But he had just been made a justice of the Supreme Court of the United States, and it was supposed he would soon come home to take his seat on the bench. In a few days, however, Smith returned, declined the offer, and retired to Baltimore. There in the heat of passion he committed the folly of publicly displaying his woes in a long address to the people of the United States, who cared nothing for him, his grievances, or his dismissal. By Madison the strictures and charges of French influence made by Smith were keenly felt. He could not answer them himself. Joel Barlow was therefore employed to do so for him, and was in turn answered by Smith.

The Department of State meantime had passed into the care of Monroe. He took charge on the first of April. Had he called for the despatches written and received since the opening of the year, that he might the better understand our relations with England and with France, he would have found the state of our relations with England more strained than ever. The insanity of George III had been followed by a regency. But the accession * of the Prince Regent had been followed by no change in the ministry and by no change of feeling toward the United States. Despairing of accomplishing anything further, Pinkney had turned to his instructions to know what to do. They were dated November fifteenth, 1810, and bade him, if, when they arrived, no minister had been appointed to succeed Francis James Jackson, ask for his passports and come home.† No successor to Jackson had been appointed, and Pinkney accordingly, on the thirteenth of February, wrote for an audience of leave.‡ The effect was immediate. Before the sun set twice Augustus J. Foster had been named as Minister.# There was now no need for

* February 6, 1811.

† Smith to Pinkney, November 15, 1810. American State Papers, Foreign Relations, vol. iii, p. 375.

‡ Pinkney to Wellesley, February 13, 1811. American State Papers, Foreign Relations, vol. iii, p. 412.

Wellesley to Pinkney, February 15, 1811. Ibid., p. 413.

Pinkney to depart. But he seems to have thought it too late to turn back and to have sought to provoke some act which would give him a reason for leaving; for no sooner did he learn that Foster was to set out for Washington than he asked of Wellesley what the new Minister was to do. Was he to seek to restore harmony between the two nations? Was he to announce the repeal of the orders in council; the abandonment of the blockade of 1806; the settlement of the Chesapeake affair; was he, in short, to do all these just and reasonable acts necessary to make the two peoples friends?* The meaning of the note could not be misunderstood. It was an ultimatum. It was accepted as such and politely answered No.† Pinkney now had just what he wanted, and, without a moment's delay, he sat down and wrote for an audience of leave on the twenty-eighth of February.‡ The audience was given, and, for the first and last time in the history of our country, an American minister quitted London in a hostile and threatening manner.

The departure of Pinkney was followed in a few weeks by the departure of Foster. His instructions bade him protest against the seizure of the Floridas; settle the Chesapeake affair in such way as pleased the United States; take the stand that the French decrees had not been repealed, that Madison was quite mistaken, and that the demand for the lifting of the blockade of 1806 could not be complied with. But when Foster on his way to Annapolis anchored in Hampton Roads late in June, he found the people of Norfolk rejoicing over an occurrence concerning which he had no instructions whatever. While he was at sea, the frigate President had met and beaten the English corvette Little Belt.

The proclamation of Madison renewing trade with France had brought on the coast a fleet of English ships which renewed the old practice of blockade, impressment, and search. Two of these ships—the Melampus and the Guerrière, Captain Dacres in command—lay off Sandy Hook, where they com-

* Pinkney to Wellesley, February 17, 1811. American State Papers, Foreign Relations, vol. iii, p. 414.

† Wellesley to Pinkney, February 23, 1811. Ibid., vol. iii, p. 415.

‡ Pinkney to Wellesley, February 23, 1811. Ibid., p. 415.

mitted such bold and impudent depredations on American merchantmen bound for France that it became necessary to interfere. Commodore John Rodgers was accordingly ordered by the Secretary of the Navy to put to sea and protect American ships from English cruisers.* Rodgers had for his flagship the forty-four-gun frigate President. In her he set sail from Annapolis on May tenth; passed the capes on the fourteenth, and on the morning of the sixteenth, when some thirty miles from Cape Charles and some eighteen miles off the coast, sighted a ship to the eastward, standing toward him with all sail set. As well as he could make out from the shape of her sails, the stranger was a man-of-war. But he knew of no man-of-war on that part of the coast save the Guerrière. Supposing her to be the Guerrière, he determined to run down and ask if a sailor named Diggio, lately impressed from an American brig, was on board. During several hours the two ships stood toward each other, the stranger showing no colors but making signals. Finding they were not answered, she changed her course about a quarter before two, and bore away to the southward, with Rodgers in full chase. At half past six, the vessels having approached within gun-shot, the stranger came to and hoisted her flag. But it was then too dark for Rodgers to distinguish it; so he came on, and, about half past eight, rounded to within pistol-shot.

The story of what now happened, as told by Commodore Rodgers and as sworn to by every officer and man of his crew, is this: As the President rounded to, Rodgers hailed and shouted through his trumpet: "What ship is that?" But the stranger sent back his own words: "What ship is that?" "What ship is that, I say?" Rodgers again demanded. A flash in the dark and a ball in the President's main-mast was the sole reply. The next moment Third Lieutenant Alexander James Dallas, who had been watching at a port-hole, rushed to one of the guns in his division and fired it without orders. The stranger answered with three shots and a discharge of musketry. The President sent back two broadsides which

* Secretary Paul Hamilton to Commodore John Rodgers, May 6, 1811. Manuscripts, Navy Department.

silenced the enemy for a few minutes. But she again opened, kept on firing for fifteen minutes, and then lay disabled and ungovernable at the mercy of the President's guns. The fighting having ceased, Rodgers again hailed, and, understanding the stranger to be in great distress, beat about all night with lights displayed. At break of day a boat from the President went on board and came back with word that the stranger was his Majesty's ship Little Belt, a corvette of twenty guns, Captain Bingham commanding.

The story of Captain Bingham, as told at the official inquiry at Halifax and as sworn to by his lieutenants, his purser, his surgeon, and his boatswain, was very different. He was, he said, on his way from Bermuda with despatches for the Guerrière, when, on the morning of May sixteenth, he fell in with the President and gave chase. But early in the afternoon, concluding that the strange sail was an American frigate, he gave up the chase and resumed his course in search of the Guerrière. Thereupon the President turned, followed, and at half past six was near enough for him to distinguish the stars in her broad pennant. Then he thought it prudent to bring to, run up his colors, double-shot his guns, and take every precaution against a surprise. At a quarter past eight he hailed and asked what ship it was. But the captain of the President repeated his words, and fired a broadside, to which he instantly replied. Each commander thus accused the other of firing first. But no one who will take the pains to read, carefully and in cold blood, the evidence collected by the two governments, will doubt that the first shot came from the Little Belt.*

The Little Belt escaped with "all her rigging and sails cut to pieces," without "a brace or a bowline left," with her "upper works all shot away," with her starboard pump gone,

* The British statement of the affair, as told by the officers of the Little Belt and transmitted to the Secretary of State, will be found in American State Papers, Foreign Relations, vol. iii, pp. 473–476. The Proceedings of the Court of Inquiry held on the conduct of Commodore Rodgers is given in the same volume, pp. 476–498. The story of two sailors who, at Halifax, claimed to be deserters from the President will be found in London Times, December 7, 1812; the New England Palladium, February 18, 1812; and the Aurora, February, 1812. The men were never on the President, and their story is false.

with her masts damaged; "with many shots through between wind and water," and with thirty-two men dead or wounded on her deck." The President came out of the action with one boy wounded and with her rigging slightly hurt, and went on her way to New York.

Thither news of the event had preceded her. Two days after the fight the people of Norfolk were greatly excited by a story told by some fishermen. The men declared, most solemnly, that after sundown, on the evening of May sixteenth, they had heard heavy firing off Cape Henry. Not a person in the town but felt sure that the insolence of the Leopard had been repeated, that the Melampus or the Guerrière had attempted to search the President, and that the attempt had been resisted with force. As day after day went by and neither the President nor any confirmation of the story arrived, the eagerness of the people along the Chesapeake to know the result became intense. Some began to doubt the pilots and the fishermen. Others began to fear that the President, like the Chesapeake, had been badly disabled, or perhaps forced to strike. But at Baltimore the people were more fortunate, and had scarcely heard the news when it was confirmed. On the twentieth the ship Pallas, from Denmark, reached that port with a statement on her log that after sundown on the evening of the sixteenth heavy cannonading had been heard off Cape Charles, that the fight continued from twenty to thirty minutes, and that upward of fifty guns had been fired.* Still the press was not convinced. One journal cautioned its readers to beware of such vague rumors. England would not be guilty of such an act, for she could gain more by cajoling, by plundering, by impressing, by war in disguise than by war without disguise. Rodgers would not be guilty of such an act without order, and the present rulers were not the men to issue them. Not till the President passed Sandy Hook and dropped anchor in the bay and sent a report of the fight to the city was it generally believed that an encounter had really taken place. As the result was satisfactory, the interest in the affair went down quickly, and when

* Baltimore American; Aurora, May 23, 1812.

Foster landed at Annapolis, late in June, the people were discussing not the conduct of Rodgers, but the reasons which could have induced the Little Belt to lay to at dusk and provoke an attack from so large a frigate as the President.

From Annapolis, Foster went without delay to Washington, was received by Madison on the second of July, and that same day entered on the duties of his mission. His instructions gave him power to do but one thing. He might, provided he listened to no offensive language, settle the Chesapeake affair in any manner the United States desired. It would have been wise, therefore, to have begun with this and win what good feeling he could by ending it. But he chose another course, and, having made a long protest on July second against the occupation of West Florida, followed it up on the third with one longer still against non-importation.* To us the letter is of no small interest, for it states fully, yet concisely, the ground on which Great Britain rested her orders in council and the reasons why she would not revoke them. The Berlin decree was, in her eyes, a direct act of war. It forbade all trade with her ports, though France had not the means necessary to enforce the prohibition. Such wanton violation of the laws of civilized war justified England in retaliating with a like interdiction of all commerce with France. But she waived her right and stopped, not all commerce with her enemy, but such as was not carried on through her ports. No one knew better than his Majesty that such restrictions must be hurtful to neutral nations. No one more deeply regretted that they were so. But it must be remembered that the injury to neutrals arose from those aggressions of France which forced England, in self-defence, to resort to the orders in council. It was on the existence of the decrees of Berlin and Milan that his Majesty rested the justification of his orders. Napoleon, it was true, rested the Berlin decree on what he was pleased to describe as the English extension of the law of blockade. She had, in his words, extended to unfortified towns and commercial ports, to harbors, and to

* Foster to Monroe, July 13, 1811. American State Papers, Foreign Relations, vol. iii, pp. 435–437.

mouths of rivers, that system of blockade which by the law of nations was limited to fortresses really invested by force. Neither the law of nations nor the practice of Great Britain had ever justified such a rule. That no place, except fortresses in a state of complete investiture, could be deemed lawfully blockaded was a rule of Napoleon's own making. He had asserted again in support of his Berlin decree that Great Britain had declared places to be in a state of blockade before which she had not a single ship; even whole coasts and empires. This, too, was false. Never for a moment had Great Britain pretended that a blockade was valid unless maintained by an adequate force. Her blockade, in May, 1806, of the coast from Brest to the Elbe was maintained by a force especially appointed for the purpose, and was lawful. The grounds on which the Berlin decree rested had, therefore, no existence. The attempted justification was a mere pretence. The decree was not a measure of just retaliation, as were the orders in council, but a direct act of war. The orders thus resting on the decrees could not be revoked till the decrees which caused them were repealed. Passing to the assertion of the United States that they were repealed, Foster reminded Monroe of the speech of Napoleon to the deputies from Bremen, Hamburg, and Lubeck, of the report of Cadore, of the letter of the Minister of Justice to the President of the Council of Prizes, of the seizure of the brig New Orleans Packet at Bordeaux and of the Grace Ann Green at Marseilles, asked him if, in the face of such evidence, the assertion could be supported, and urged the injustice of non-importation. The question was most pertinent and embarrassing, and many conferences were held and many notes exchanged before Monroe made answer. He was seeking for time, and, while he put off the minister from England, was laboring hard with the minister from France.

On September twelfth, 1810, John Armstrong left France for the United States, leaving Jonathan Russell as *chargé d'affaires*. Cadore's letter of August fifth had promised that the decrees of Berlin and Milan should be repealed on the first of November. When the day arrived, Russell accordingly wrote asking if the decrees had been repealed. But a

month went by without an answer, and while he waited he received from Washington a copy of the proclamation of November second and instructions to consider the decrees as revoked. To do so was not possible, for the instructions had not been eight and forty hours in his hands when the Moniteur gave positive proof that the decrees were still in force. In one issue was the Report of Cadore on the Foreign Relations of the Empire declaring that his Majesty would persist in his decrees as long as England persisted in her orders; that he would oppose the blockade of the continent to the blockade of the coast; and the seizure of British goods on land to pillage on the seas. In another issue was the text of a report by Comte Semonville to the French Senate in which he described the decrees as "the palladium of the seas." Nor was this all, for Russell had a week before sent off a strong protest to Cadore against the seizure, long after November first, of the brig New Orleans Packet and the schooner Grace Ann Green.

In spite of all this Russell was now instructed to consider the decrees as repealed. He obeyed, sent the proclamation to Cadore, and told him that the President believed the promise of August fifth to have been made good, but took occasion to demand the meaning of the words of Semonville and Cadore, and to insist that the system of issuing French licenses to vessels in American ports must stop. No official answer was ever returned. Russell, however, was sent for, was assured that Napoleon loved America; assured that the decrees, so far as they related to the United States, were at an end, and received the two letters from the Minister of Justice and the Minister of Finance, which Madison late in February transmitted to Congress as evidence that the decrees of Berlin and Milan were no more. These letters ordered that American ships seized after November first should be sequestered till February second. Not one word of assurance could be obtained that the decrees had been, or ever would be, repealed as to Great Britain. But Madison considered what had been done as quite enough; sent the two letters to Congress, and on them as evidence secured the passage of the Non-importation Act of March second, which Russell, toward the end of

April, delivered to the Duc de Bassano, the new Minister of Foreign Affairs. After reading it, Napoleon sent for his ministers and made known his determination. He had expected that the United States would declare war against England. He ought to insist that she should; but, as she had recognized the decrees of Berlin and Milan by authorizing her citizens to trade with France and forbidding them to trade with England, he would be content. He would say: "The decrees of Berlin and Milan are revoked as to the United States. But as every American ship which goes to England or is bound for England is a vagrant, she may be confiscated in France." This he was the more ready to do because the day did not seem far off when the United States must go to war with Great Britain. The true policy for France was to leave the principle involved in the decree a little obscure and to wait.* When, therefore, the Duc de Bassano answered Russell, he declared the will of the Emperor to be that such ships, sixteen in all, as had come direct to France or Italy since the first of November, and had been sequestered, should, both ship and cargo, be released.† But there were in French ports eight other vessels captured and brought in by French privateers for having touched at English ports. Russell now asked what was to be done with them.‡ Napoleon was eager for delay, and two months passed before Bassano replied that three of the eight had been released.#

So many were the delays and such the difficulties which, in those troublous times, beset the transmission of intelligence, that it was late in July when Madison learned of the release of the ships set free in May. Even then the intelligence was unofficial, for it came from England. Nevertheless, it was received with thankfulness, and, unable to wait for official despatches, the Secretary sent at once for Serurier. ‖ More than four months had elapsed since the Senate had confirmed the

* Correspondence, vol. xxii, p. 122.

† Bassano to Russell, May 4, 1811. American State Papers, Foreign Relations, vol. iii, p. 505.

‡ Russell to Bassano, May 11, 1811. Ibid., p. 506.

Russell to Monroe, July 15, 1811. Ibid., pp. 504–505.

‖ July 17, 1811.

appointment of Joel Barlow to be Minister to France. Yet Barlow still lingered at Washington. Against this Serurier had repeatedly protested and had repeatedly been put off with excuses. At one time he was told that the President was waiting for the arrival of the Essex with despatches from France. At another that the President was hesitating because the Essex had not brought news of the repeal of the decrees; because the people were clamorous that Barlow should not depart; because, till it was known what France had done, the instructions of the new minister would not be written. Now, however, Serurier was told that if he would write a letter confirming the news of the repeal of the decrees, Barlow should set off immediately. Serurier gladly wrote the letter, but he used a vague and guarded language which said much and meant nothing.* The disgust of Madison was great. He had hoped to obtain from Serurier a positive assurance that the decrees were repealed, and with it refute the denial of Foster. He had failed, and failed so completely, that he did not venture to include this letter in the correspondence which, some months later, he laid before Congress. As nothing more was to be gained by delay, Monroe now answered Foster.† He maintained in so many words that the decrees had been repealed as to the commerce of the United States on the high seas. This was proved by the fact that since November first, 1810, no American vessel had been condemned under the decrees. The seizure of the New Orleans Packet and the Grace Ann Green were not cases in point. They had been seized under municipal, not under international laws. They had come from a British port and had attempted, at a French port, to enter goods forbidden to come into France. The fact of repeal again was proved by the speech to the deputies from the Hanse Towns, and by the reports of the Minister of Foreign Affairs and of the Minister of Marine. The speech declared that the French blockade of England should cease in favor of those nations for whom England should revoke her blockade of the continent, or who, by

* Serurier to Monroe, July 19, 1811. Monroe Correspondence, State Department Archives.

† Monroe to Foster, July 23, 1811. American State Papers, Foreign Relations, vol. iii, pp. 439–442.

their own exertions, should resist the pretensions of England. The United States had resisted the pretensions of England by the act of May, 1810, a fact admitted by France in the letter of the Minister of Justice to the President of the Council of Prizes. What more did England expect? Was it the business of the United States to open the continent of Europe to English commerce? So far as the United States was concerned, the French decrees had ceased to operate on the high seas. More than this the United States could not claim.

Language of this sort, however, was reserved for Foster. To Serurier both Monroe and Madison spoke in a very different strain. The letter to Foster had hardly left the Department of State when Serurier sent in the official intelligence of the release of the ships for which Madison had waited so anxiously. Calling the next day to bid farewell to the President, who was about to start for Virginia, conversation turned on this action of the Emperor. Then Madison opened his heart, expressed great regret that American ships brought into French ports since November first by French cruisers acting under the Berlin and Milan decrees had not been released with those which came in voluntarily, and said that failure to fulfil this, the chief part of the contract, destroyed the effect of all the rest. He might have said that it raised doubts as to the veracity of his Secretary. Not twenty-four hours before, Monroe had, over his own signature, declared to Foster that Napoleon was enforcing the municipal, not the international operations of the decrees. Yet the ships held were those seized under the international, and the ships set free were those seized under the municipal operations of the decrees; facts which proved that the conduct of Napoleon was the very opposite of what Monroe had stated. The old position, however, had to be maintained, and, in the instructions which Barlow soon after took with him to France, it was again distinctly stated that the decrees of Berlin and Milan were repealed. Having signed the instructions and issued a proclamation calling Congress together on the fourth of November, Madison fled from the vexations that surrounded him at Washington to the quiet of his Virginia plantation.

CHAPTER XXI.

THE STRUGGLE FOR PEACE.

As the newspapers, one after another, copied the proclamation calling Congress together in November, the belief spread far and wide that the country was to be made ready for war. Federalists were convinced that war was imminent, because Foster had been a month in Washington, yet had accomplished nothing; because, on the very day the proclamation was issued, the French Minister had been long closeted with Monroe; and because Barlow after so long a delay had been ordered to set out for Paris. Republicans held to the belief, because war with England was just what they wanted. Their conversion from the peaceful ways of Jefferson and the men they now began to call the Fathers had been slow; but it had at last been accomplished, and had been accomplished by nothing so much as by the distress produced by the restriction they themselves had laid on commerce. In the early days of the embargo it had been the custom of these men to predict great benefits to the country from the stoppage of foreign trade. Capital, they would argue, once locked up in sea-ventures, in ship-building, in importing, has been turned loose, and, forced to find investment somewhere, will go into enterprises too long neglected. Manufactures will begin to flourish. Unable to bring in goods from abroad, our people will soon make such as are absolutely necessary at home, and sell them at a handsome profit. Is this to be regretted? Commerce has drawn us into entangling alliances, has exposed us to insult, to robbery, to abuse, has bred a taste for finery which is fast breaking down the simplicity and independence of the American character, and has spread among us foreign

atheism, foreign sympathies, foreign political ideas. Embargo has stopped all this, and will show the people that they can be utterly independent of Europe, and that, if they wish to be great, free, prosperous, and happy, they must depend solely on themselves. Is this nothing to be thankful for?

But commercial independence of Europe was not to be had without price, and, before the embargo had been on many months, the fine things it was to produce in the future were forgotten in the distress it produced in the present. Had ruin been the end and aim of the law, a better time for its application could not have been chosen. In March, 1807, Jefferson, by proclamation,* had put off the operation of the Non-intercourse Law till the second Monday in December. The belief was general that it would then be again suspended or repealed, and no preparations of any kind were made to meet it. Never had the acreage been so great. Never had the movement of the crops to the seaboard been so steady. Even when the Non-intercourse Act did take effect, the shipments went on without diminution, for it was the fixed determination of the merchants to evade it. The exchanges and the coffee-houses were as noisy as ever with the hum of buyers and sellers. Never had the underwriters been so beset for insurance. Never had the ports been more crowded with shipping. Never had the columns of the newspapers exhibited such competition among the merchants and shippers for cargoes. Suddenly, without assigning a single reason, without giving a moment's warning, the embargo was in force. Every stage-coach that rumbled out of Washington, every post-rider, carried bundles of orders from the Secretary of the Treasury to the collectors of the ports, and all foreign trade was stopped. In January the coasting trade was restricted, and what was well named a paralysis seized on the business of the coast towns and began to spread inward. Ships were dismantled and left half loaded at the wharves. Crews were discharged. The sound of the caulking hammer was no longer heard in the ship-yards. The sail-lofts were deserted, the rope-walks were closed; the cartmen had nothing to do. In a twinkling

* March 24, 1807.

the price of every domestic product went down, and the price of every foreign commodity went up. But no wages were earned, no business was done, and money almost ceased to circulate. Men who had contracted obligations could not meet them, and, as the summer wore on and the embargo was made more and more severe, failures and bankruptcies began.

To form an accurate conception of the enormous monetary loss inflicted on the people by the embargo would not now be possible, yet it is not impossible, from such statistics as can be gathered, to form a rude idea of what this loss must have been. The Federal revenues fell from sixteen millions to a few thousands. The records of the custom-houses show that more than thirty-five thousand sailors had taken out protection papers in evidence of citizenship. As thousands more did not, it is reasonable to believe that more than forty thousand citizens of the United States were serving as sailors on merchant ships. Some had been pressed into the service of Great Britain. Some, when the embargo was laid, were in foreign ports and did not return to the United States. Yet, when all due allowance is made, upward of thirty thousand seamen must have been thrown out of employment. To these are to be added twenty-five thousand foreigners attracted to the American service by high wages. Sailors' wages were thirty dollars per month. They earned at least three hundred per year, and lost during the fifteen months of embargo twenty millions of dollars. The value of the shipping embargoed has been estimated at fifty millions, and, as the net earnings were twenty-five per cent., twelve and a half millions more were lost to the country through the enforced idleness of the vessels. From an estimate made at the time, it appears that one hundred thousand men were believed to have been out of work for one year. They earned from forty cents to one dollar and thirty-three cents per day. Assuming a dollar as the average rate of daily wages, the loss to the laboring class was in round numbers thirty-six millions of dollars. On an average, thirty millions had been invested annually in the purchase of foreign and domestic produce. As this great sum was now seeking investment which could not be found, its owners were deprived not only of their profits, but of two millions of inter-

est besides. There were in New England, another computer asserts, eighty thousand families each poorer in 1809 by just so much as in previous years they had derived from the sale of grain, corn, potash, or fish. This loss, he avers, was, on an average, one hundred dollars each, or eight millions for all. The people of Portland declared, in an address adopted in town-meeting, that the embargo had cost them seven hundred thousand dollars.

Statistics of this sort are indeed to be received with the greatest caution, yet, crude and hasty though they be, they afford some conception of the financial distress the embargo brought on the poor and needy, and even on the well-to-do. Unable to bear the strain, thousands on thousands went to the wall. The newspapers were full of insolvent-debtor notices. All over the country the court-house doors, the tavern doors, the post-offices, the cross-road posts, were covered with advertisements of sheriffs sales. In the cities the jails were not large enough to hold the debtors. At New York during 1809 * thirteen hundred men were imprisoned for no other crime than being ruined by the embargo. A traveller who saw the city in this day of distress assures us that it looked like a town ravaged by pestilence. The counting-houses were shut or advertised to let. The coffee-houses were almost empty. The streets along the water-side were almost deserted. The ships were dismantled; their decks were cleared, their hatches were battened down. Not a box, not a cask, not a barrel, not a bale was to be seen on the wharves, where the grass had begun to grow luxuriantly.† A year later, in this same city, eleven hundred and fifty men were confined for debts under twenty-five dollars, and were clothed by the Humane Society.‡

While the poor and destitute were thus languishing in the jails of the great Northern cities, the planters of the Southern

* December 11, 1808, to November 30, 1809.

† Lambert's Travels, vol. ii, pp. 64, 65.

‡ 326 persons for debts between 15 and 25 dollars.
235 " " " " 10 " 15 "
591 " " " under 10 dollars.
1,152

States were saved from immediate ruin by stay laws. No command in the Federal Constitution is more clearly expressed than that which forbids the States to pass laws impairing the obligations of contracts. Yet this was precisely what the States south and west of Pennsylvania proceeded to do. Five months after the embargo was laid, Georgia commanded her courts and justices of the peace to issue no executions, and her sheriffs to sell no property levied on, if the defendant would give security for the judgment and the costs. The law was to expire on the Christmas day following. But when Christmas, 1808, came, debtors were enabled by another law to stay execution for another year by paying one third of the judgment and one third of the costs and giving security for the rest.* In Maryland no judgment could be issued against the body, goods, chattels, lands, or tenements of any of her citizens so long as the embargo continued and for six months after it was repealed.† Virginia revived her Replevin Law of 1793, with amendments, and the provision that it should be in force till thirty days after the lifting of the embargo.‡ Before that day she replaced it by another to stay in force till 1810.# When an execution issued in Ohio the sheriff was required to summon three men to view and appraise the property about to be seized. He might then advertise and attempt to sell it. But if no bidder offered at least one half the appraised value, the property must be returned to the owner and the execution was stayed one year.‖ North Carolina debtors could stay proceedings against them for a few months if two freeholders would give security for the debt.△ In Tennessee writs could be stayed by the defendant offering security for the delivery when wanted of goods seized.◊

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* Laws of Georgia, May 24 and December 23, 1808. This Stay Law was afterward extended till 1810.

† Laws of Maryland.

‡ Laws of Virginia, session 1807–1808, chap. vi.

Laws of Virginia, session 1808–1809, chap. v.

‖ Laws of Ohio, chap. xxv, February 20, 1809.

△ Laws of North Carolina, December 23, 1809.

◊ The time of stay varied with the amount involved. For debts under $5 the term was 60 days; from $5 to $10, 90 days; $10 to $20, 120 days; $20 to $50, 9 months. Laws of Tennessee, chap. l, November 23, 1809. To be in force till October 1, 1811.

In Pennsylvania a feeble effort was made by the people living in some of the central counties and in the counties beyond the mountains to secure a stay law. They assured the Legislature that they looked on the embargo as a wise and beneficial measure; but they begged most piteously to be relieved from its effects. Money, they said, had almost ceased to circulate. There was no market for their produce, and they could not pay their debts. A law staying suits for debt and stopping the distress and sale of property, or at least re-enacting the old appraisement law of 1700, ought, in their opinion, to be instantly passed. The Legislature could see no need of such a law, and paid little attention to the petitions.

The necessities of the two sections of the country were indeed very different. The North could economize. The South could not. When the Northern farmer found his produce unsalable and his revenue gone, he could dismiss his few laborers, put a patch on his coat, and live on the grain, the pork, the flour he could not sell. Not so the Southern planter. Whether his tobacco brought two dollars or ten dollars the hundred-weight, whether his rice was sold or unsold, whether his cotton was sent abroad or stayed at home, his expenses were just the same. His house, his table, his social standing must be maintained. His hundreds of slaves must be clothed and fed. That men so situated should demand a stay law to keep their lands, their houses, and their slaves from falling into the clutches of the shipper on whom they had overdrawn their account, or of the bank they owed for advances on their crops, was no more than human nature. That stay laws were wise measures no one for a moment asserted; they were necessary. This necessity every Republican believed came not from the embargo, but from the conduct of Great Britain which caused the embargo. On England, therefore, they laid the blame and felt toward her a fierce hatred which they displayed in many curious ways. The most absurd was, perhaps, the attempt to stop the use of English common law in American courts. Many years before, New Jersey had forbidden her bar to cite or read in her courts any decision, any opinion, any treatise, any compilation, or exposition of common law made or written in Great Britain since the first of July, 1776, and pre-

scribed a heavy punishment for any counsellor, solicitor, or attorney who did.* But no State imitated her till the terrible time of the embargo, when Kentucky attempted a reform more sweeping still. A motion was made in the Assembly that henceforth no decision of a British tribunal, and no treatise on law by a British writer, should be cited as an authority in any court of the State. Though the motion was highly popular, though almost every member of the Assembly declared himself for it, Henry Clay had the good sense and the courage to oppose it. No man present was a stancher Republican. No man was more intensely American. His action could not be attributed to any love for England. Yet the most he could obtain was an amendment limiting the proscription to such opinions as had been delivered and to such legal works as had been written since the day the American colonies declared their independence. Pennsylvania came next. A member of the House of Representatives, Michael Leib, had gone into a court of justice and had there heard a case cited from an English reporter. The object of the citation, he averred, was to show that the constitution of Pennsylvania did not authorize truth to be given in evidence save under certain restrictions. Nay, he had heard the judge declare that while truth might be given in evidence it could not be given in justification. This he understood was the common law of England. It was high time, then, that the alarming and dangerous doctrines of that law were checked. Were the people of Pennsylvania to go to England to find out what their constitution meant? Were they slaves to English law, creatures of English precedent? He thought not, and in a little while a bill was before the House forbidding the citation of any English decision made since July fourth, 1776.† At the next session of the Legislature it was passed,‡ and remained on the statute books for more than twenty years.#

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* Laws of New Jersey. An act relating to Foreign Reports, sec. 1, 1801.

† Journal of the 19th House of Representatives of the Commonwealth of Pennsylvania, 1809.

‡ Laws of Pennsylvania, 1810, chap. xcviii. Journal of the 20th House of Representatives of the Commonwealth of Pennsylvania, 1810.

Purdon's Digest of the Laws of Pennsylvania, edition of 1830.

The bitter hatred of England, of which these acts are but three feeble expressions, increased with time, till it became a blinding passion, warping the judgment and overpowering the reason. The Erskine agreement, in the eyes of Republicans, was a trap set to catch American supplies. Copenhagen Jackson was a minister sent over to insult and browbeat the President. The refusal of England to own that the decrees of Berlin and Milan were repealed was simply malignant stubbornness. The older Republicans, the men trained in the school of Jefferson, still had faith in peaceful measures, and expected much from the eleventh Congress. But when that body closed its term amid the execrations of men of both parties, all hope was gone, and one great cry for war went up in every Republican district. The constituency of the party, as well as the political creed of the party, had changed. Twenty-two years had passed since the day in January, 1789, when presidential electors were chosen for the first time. Striplings then were men of middle age now. Men of middle age then had since found a resting-place in some quiet cemetery, or had reached that time of life when they were more disposed to lament the evils of the present than to seek to remove them, more disposed to look back with tender regret into the past than forward with hope into the future. They were the men who had taken a part in founding the Government. They had lived under the articles of confederation. They had framed the constitutions of the States, and debated and discussed the Constitution of the United States. They were, as Henry Clay called them, "the fathers." Their work had been to set up governments, and their heads were full of theories of government. The work of "the sons" was to administer government. To them it seemed the height of folly that commerce should be ruined, that agriculture should languish, that bankruptcy should spread far and wide, because it was not good democratic doctrine to have standing armies, standing navies, taxes, and war. In many of the States the young men were already in control. In the election for the twelfth Congress they swept the country. Of the one hundred and forty-two men who sat in the eleventh Congress, sixty-one were not returned to the twelfth. A political revolution of the utmost

importance had taken place. A new generation had come into power. On the roll of the new House were the names of men whom this generation still delights to honor; men who for many years to come controlled legislation, directed events, sat in the Speaker's chair, presided over important committees, filled high places in the Cabinet, led political parties, rose to be governors and vice-presidents, and aspired to four years of life in the White House. Yet not one of these men —neither Henry Clay, nor John Caldwell Calhoun, nor Richard Mentor Johnson, nor Felix Grundy, nor Langdon Cheves, nor George M. Troup, nor Peter Buell Porter—had then reached his forty-first year.*

For us who look back it is easy to see that a new era opened with the elections of 1810. For those who took part in the elections the result meant nothing more than a hearty condemnation of the hesitancy, the timidity of Congress in the past, and a promise of energetic measures in the future. As such the New England Federalists beheld it, and in the spring of 1811 they labored earnestly to control their State Legislatures. In Massachusetts a governor was to be elected and a general court, and a senator to take the place of Timothy Pickering. For governor the Federalists put forth Christopher Gore; the Republicans, Elbridge Gerry, and, under the cries of "Gore and Free Trade," "Gerry and Sequestration," the campaign began. No carefully arranged party platform was drawn up. Resolutions adopted at county meetings and at town meetings in the great cities did duty instead, and from these may be gathered the charges brought by the Federalists against their opponents. They were charged with a notorious and partial cringing to France and with impotent bluster toward England. They were charged with having embroiled the country in a quarrel with both belligerents, which they dared not settle with England for fear of France. They were charged with cutting off commerce, with ruining agriculture, with pulling down the Bank, with exhausting the Treasury, and bringing bankruptcy to every man's door.† All to whom commerce, the fisheries,

* Biographical Annals, etc., Charles Lanman.

† New England Palladium, March 8, 1811.

the mechanical arts were dear, were implored to unite and vote the Washington ticket.* The admission of Louisiana without the consent of each State was complained of. It was a violation of the spirit of the Constitution and an infringement of the rights of the original parties to the compact.† To preserve the Union was a sacred duty. To see the administration pursue measures hostile to the Union and subversive of the Federal compact was therefore alarming. Section three of the act of March second, 1811, contained a provision clearly intended to be for the benefit of merchants. It might so happen that on the second of February, the last day of grace, England would revoke her orders. If she did, her action could not be known in the United States before the first week in March. During this month or more, numbers of ships would leave English ports for the United States. These the law provided should be seized, but released on bond, the bond to be satisfied if England really had before the second of February revoked the order; the bond to be forfeited if she had not. The language of the section was "any vessel or merchandise." But Gallatin ruled that it applied not to any vessel, but to foreign vessels, and to them alone, and in a circular to the collectors ordered the seizure of every American-owned ship which left a British port after February second. The whole commercial world was instantly in a furor. Such a blow to commerce had not been struck since the embargo. The act of May, 1810, and the proclamation of November, 1810, had left the merchants free to trade with England and her colonies. Vast quantities of American produce had, accordingly, during the autumn of 1810, been shipped to the West Indies and sold on credit. Buyers were to pay in such crops as had a market in the United States. But these crops would not be ready for shipment before March or April, and were, by the order of Gallatin, shut out of the country. Millions of dollars of capital were thus locked up in the West Indies. Hundreds of ships were thrown out of commission. Thousands of sailors were again forced into idleness, and, before election day came, the

* New England Palladium, February 19, 1811.

† Essex County Resolutions, Columbian Centinel, March 16, 1811.

Federalist journals had a black list of fifteen ships confiscated in American ports under what they called Gallatin's decree.

The event of the campaign, however, was the Federalist meeting at Faneuil Hall on the Sunday night before election day. Upward of five thousand are said to have been present, and these, after listening to earnest speeches, adopted a long series of resolutions. Nothing, they said, in our foreign relations could justify the late conduct of the Government. The French decrees were not repealed. The offers of France to relax them were deceptive. The act of March was unjust, oppressive, and tyrannical. It tended to ruin and impoverish some of the most industrious and meritorious citizens of the commonwealth. The only means, short of an appeal to force, to prevent such a calamity was the election of men to the various offices in the State government who would "oppose by peaceable but firm measures the execution of laws which, if persisted in, must and would be resisted." *

There was little in these sentiments to call for remark. The tone was not new to New England. They were uttered by excited men, on the eve of a hotly contested election, against the administration which had, in their belief, robbed them of their money, goods, and ships. Yet when the election was over and Gerry had won, he took up the resolutions and in a long speech before the General Court answered them in detail.† The Federalist press answered him. The Republican newspapers replied, and an event of purely local importance became for a time an event of general interest. His speech was in bad taste. The charges had been answered at the polls, where the Republicans carried everything. The governorship was theirs by three thousand majority. The Assembly was theirs by a majority of twenty-two, and for the first time in the history of their party they secured a majority of the Senate. The triumph was indeed a real one, for it enabled the Republicans to send Joseph B. Varnum to the Senate

* New England Palladium, April 5, 1811. The threat of resistance called forth a pamphlet, Resistance to the Laws of the United States; considered in Four Letters to the Hon. Harrison Gray Otis, Esq., late President of the Senate of Massachusetts. By Leolin. Boston, 1811.

† Columbian Centinel, June 8, 1811.

of the United States in place of Timothy Pickering, whose term had expired, and, at a critical moment in our history, made Massachusetts a Republican State.

The excitement in New England did not go down with the spring election. As the summer wore on, the distress caused by the Plundering Act—so the Federalists nicknamed the Non-importation Law—threatened to renew the scenes of the O-grab-me days. The working of this law and the fearful penalties it entailed may be illustrated by a single case. The ship Lothair had sailed from Liverpool for Boston on the fifteenth of February. The Plundering Act had not then been passed. She ought, therefore, by civilized usage to have been exempt. By the ruling of Gallatin's circular, however, she fell under the law and incurred the fines and forfeitures prescribed by the fifth and sixth sections of the revised act of 1809. These were of three kinds. In the first place, the owner or owners of the cargo forfeited their goods and three times the value of the goods. In the second place, the owner of the vessel forfeited his craft and three times the value of the cargo. In the third place, the master of the Lothair was subject to a fine of three times the value of the cargo. The ship was worth twelve thousand dollars; the cargo was appraised at four hundred thousand dollars, and the total fine laid on captain, ship-owner, and importers was four millions and twelve thousand dollars! * For what crime was this terrible punishment visited upon her? She had left England two weeks before the act under which she suffered had been passed. Injustice so gross was too much for the judge, who gladly took refuge in the fact that she had cleared out on the last day of January, and released her. No such mercy was

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* 1. Owners of cargo:

Forfeiture of goods	$400,000
Fine of three times the value of goods	1,200,000
2. Owners of ship:	
Forfeiture of ship	12,000
Fine of three times the value of cargo	1,200,000
3. Master of ship:	
Fine of three times the value of cargo	1,200,000
	$4,012,000

shown to ships clearing three days later. That such fines should be laid on ships which at any time sailed in ignorance of the law was bad enough. But that they should be imposed on vessels leaving port before the law existed was declared to be simply infamous. Seizures, however, went on, and by the middle of May forty-four informations were advertised for trial in Boston alone.

What took place in Boston on a large scale took place on a smaller scale in every port of entry along the coast. At New Haven the merchants appointed a committee to correspond with the neighboring towns and petitioned Madison to call Congress together. They told him that they were deeply engaged in the West India trade. Their exports had been sent out the previous autumn, had been sold on credit, and were to be paid for in produce when the crops were marketed in March or April. Under the Non-importation Law these crops could not come in at all. They reminded him of the suffering this brought down on them, on the ship-owners, and on the seamen, and asked by what constitutional authority the law was passed. He should remember that "cutting off trade" was one of the grievances mentioned in the Declaration of Independence; and that one of the objects of the revolution was the establishment of trade. Possibly he might not think commercial distress extraordinary enough to justify an extra session of Congress. But how was it with the behavior of France? Did not her refusal to revoke her decrees after solemnly promising to do so make a session necessary? *

Madison assured the merchants that the Plundering Act was a regulation, not a destruction, of commerce, and perfectly constitutional; that it was always the fate of a few to suffer for the good of all, and that the Berlin and Milan decrees, so far as the United States was concerned, were repealed.† Against this statement the Federalists brought up four stubborn facts. The first was the report of Cadore to Napoleon,‡

* May 4, 1811. Columbian Centinel, May 11, 1811.

† May 24, 1811. True American, June 17, 1811.

‡ "Sire, aussi long-temps que l'Angleterre persistera dans ses arrêts du conseil V. M. persistera dans ses décrets. Elle opposera au blocus des côtes le blocus continental, et au pillage sur les mers le confiscation des marchandises anglaises

which they read in the newspapers early in February,* and which declared that the decrees should not be revoked while England maintained her blockade. The second was the report made to the French Senate on the annexation of the Hanse Towns to the empire. The chairman of the committee was the Comte de Semonville, and in his report he said:† "The decrees of Berlin and Milan are the reply to the orders in council of Britain. Europe receives these decrees as her code, and that code shall be the palladium of the seas."‡ The third was the speech of Napoleon to the Deputies of the Hanse Towns—Hamburg, Lubeck, and Bremen—in which he distinctly averred that "the decrees of Berlin and Milan are the fundamental laws of my empire. . . . England is in a state of blockade as to those nations which submit to the orders of 1806."# This was made public in the newspapers about the middle of May.‖ The fourth was the language used by Napoleon to the merchants and bankers who came to congratulate him on the birth of a son. The rambling and excited way in which he spoke, the threats which he made against the whole world, led many who were present to write down from memory what he said. Several reports, differing in details but agreeing in the main, were soon travelling over Europe. That which reached America and was read by the people early in June contained the words: "The decrees of Berlin and Milan are the fundamental laws of my empire. . . . The fate of American commerce will soon be decided. I will

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sur le continent." Rapport du ministre des relations extérieures à S. M. l'Empéreur et Roi. Gazette Nationale ou Le Moniteur Universel, 15 Décembre 1810.

* Columbian Centinel, February 2, 1811.

† "Ce jour est arrivé; les décrets de Berlin et de Milan sont la réponse aux arrêts du conseil. Le cabinet britannique les a, pour ainsi dire, dictés à la France. L'Europe les reçoit pour son code, et ce code sera la palladium de la liberté des mers." Gazette Nationale ou Le Moniteur Universel, 17 Décembre 1810.

‡ True American, April 5, 1811.

"Les décrets de Berlin et de Milan sont la loi fondamentale de mon empire. Ils ne cessent d'avoir leur effet que pour les nations que defendant leur souverainete et maintiennent la religion de leur pavillon. L'Angleterre est en état de blocus pour les nations qui se soumittent aux arrêts de 1806." Le Moniteur Universel, 20 Mars 1811.

‖ Columbian Centinel, May 15, 1811.

favor it if the United States conform to these decrees. In a contrary case their ships will be driven from my empire." * Here is a mass of evidence, the Federalists triumphantly exclaimed, which cannot be gainsaid. Out of the mouth of Napoleon and his officials do we judge France.

Such evidence was indeed most embarrassing; but it must be explained away, and the duty of making such explanations was laid on the National Intelligencer. Selecting the speech to the bankers and merchants, the editor began by doubting whether it had ever been made. Admitting that it had, he was at a loss to know why it concerned America. What had the people of the United States to do with what Napoleon said to his officers and confidants? Not his chit-chat, but his acts concerned us. His acts, however, seemed to be strangely misunderstood. Many people supposed the decrees of Berlin and Milan had not been revoked. Yet they had been revoked as to the United States, and that was all that could be demanded. True, American ships were seized, but the seizures were made under the municipal laws of France. This was certainly offensive and insulting to us, but it had nothing whatever to do with the Berlin and Milan decrees, which involved abstract principles of blockade.†

At this stage in the quarrel the British frigate Minerva, with Minister Foster on board, dropped anchor in Hampton Roads and then went on to Annapolis. All eyes were now turned on him, and both parties waited anxiously for news from Washington. As the weeks passed and none came, grave fears of a rupture were engendered. Some thought the affair of the Little Belt had proved an obstacle. Some thought the President must have been too unyielding. But not till the National Intelligencer published the proclamation calling Congress together, and gave the reasons for the call, was all hope extinguished. Foreign relations, the Intelligencer informed the people, had made the meeting of Congress necessary. The communications received from Foster did not come up to the reasonable expectations of the Government. The repeal of the orders in council was made to de-

* Aurora, June 5, 1811.

† National Intelligencer, June 15, 1811.

pend on further evidence than had yet been received of the repeal of the French decrees. Retaliation was threatened if non-importation was persisted in. The President could do no more. To the question, What next? Congress must make reply. But the Republican press did not wait for Congress to reply, and, led on by the Aurora and the Intelligencer, it raised the cry of war, and was still laboring strenuously to bring the people to this way of thinking when the twelfth Congress met in November. The House at once elected Henry Clay its Speaker.

The commanding place which this great man is henceforth to hold in my narrative; the influence which, whether in office or out of office, he exerted on the course of events for forty years to come; the great things with which his name is joined; the unmerited obloquy and the extravagant praise with which he has been loaded; the splendor of his well-earned fame as a parliamentary orator, as a popular speaker, as a popular leader, make it most unfitting to discuss him at this period of his career. A few words by way of biography shall suffice. All attempts to estimate his character and his work shall be left till that day in June, 1852, is reached when the telegraph announced to our countrymen that the great Whig leader, that the great Pacificator, that the great Compromiser, that "Harry of the West," that another of the illustrious triumvirate—Clay, Webster, and Calhoun—was dead.

Henry Clay was born, his campaign biographies, some of which passed under his own eye, assure us, on April twelfth, 1777, in Hanover County, Virgina. His father, John Clay, was a Baptist preacher who administered to the spiritual wants of the poor whites on the South Anna river in a region known as "the Slashes." In 1781 the good man died, leaving Henry, in the language of his campaign biographers, with poverty for his only inheritance and Providence for his only guide. But this is unjust to his mother. She indeed was a guide, and sent him regularly to the little log-cabin where the traditional wandering school-master taught him to read, write, add, and spell. When not in school, his time was spent laboring on the patch of land which cannot be called a farm. Long

afterward, when the country was ringing with his fame, when it became fashionable for men who had never distinguished him from hundreds of other boys to ransack their memories for anecdotes, one was told which is still repeated. In this he is represented as a hard-working lad dressed in a coarse cotton shirt and Osnaburg trousers, without hat and without shoes, straddling a bag of grain or corn thrown over the back of a horse which he guides with a rope to Daricott's mill on the Pamunkey. The story is quite probable, and his admirers, taking it up, won for him thousands on thousands of votes by dubbing him the "mill-boy of the Slashes."

At fourteen, his mother having married again, his step-father placed Henry in a small retail store kept by one Richard Denny near the market place in Richmond. There he remained till, a year later, his step-father secured for him a yet better place in the office of Peter Tinsley, Clerk of the High Court of Chancery. To the senior clerk in the office fell the duty many years after of describing the appearance of the lank, awkward, rawboned boy as he came to take his seat at the office desk, bearing all over him, in the arrangement of his hair, in the cut of his home-made clothes, in the uncommon stiffness of his shirt, the marks of the pride and undying love of his mother. Hardly was he settled in his new place when his step-father caught the rage for Western emigration, and the whole family moved into Kentucky, leaving the lad of fifteen to make his way as best he could at Richmond. Fortunately, he attracted the attention of George Wythe, the Chancellor, and was selected by him to write out and record the decisions of the Court of Chancery.* During the four years he was so employed the Chancellor took a fatherly interest in his welfare, shaped his manners, formed his mind, prescribed his reading, and probably suggested that he should study law. Scanty knowledge was then required for admission to the bar, and after a twelvemonth in the office of the

* After the reports were published, copies were sent by the Chancellor to Jefferson, John Adams, and Samuel Adams. In these copies it was the business of Clay to make notes, dictated by Wythe, sometimes in English and sometimes in Greek. One of the volumes once belonging to Jefferson is now in the library of the Supreme Court at Washington.

Attorney-General, Clay received his license and started west to begin practice at Lexington, Kentucky. He was still some months under age, and had, as yet, no higher ambition than to make each year one hundred pounds Virginia money.* This wild hope was quickly realized. Prosperity attended him from the very start. His genial qualities won him friends. His friends brought him law-cases. His oratorical powers made him successful with juries, and his success with juries spread his fame over the whole State. Before he had been two years in Lexington his friends, his clients, and his local fame sufficed to send him to the State Constitution Convention of 1799. In 1803 he entered the Legislature. In 1806 he went to the Senate of the United States to fill the unexpired term of John Adair, the friend and confederate of Aaron Burr. There he rose at once into notice as a fine speaker, a ready debater, a strong friend to internal improvements, and was thought not undeserving of repeated mention in the diaries of John Quincy Adams and William Plumer. On the expiration of his term in 1807 he was again returned to the Kentucky Legislature, was made Speaker of the Assembly, once more distinguished himself as the steady advocate of internal improvements and American manufactures, and in 1809 went back to the United States Senate to fill the unexpired term of Buckner Thurston. To the rôles he had played in his previous term a new one was now added. He was still the champion of better roads, better canals, better means of communication at Government expense. His voice was still raised, his vote was still cast, in behalf of every effort to encourage domestic manufactures. But he was, more than all, the mouth-piece of young America. In almost every speech of any length made by him during the sessions of the eleventh Congress the spirit which animated the young Republicans is easily discernible. In his speech on the occupation of West Florida it is expressed most fully.

A senator from Delaware had said that he feared that the occupation of West Florida would lead England as the ally of Spain to make war on us. The threat set Clay on fire, and at the close of a long reply he burst forth: "Sir, is the time

* Clay's speech at Lexington in 1842.

never to arrive when we may manage our affairs without the fear of insulting his Britannic Majesty? Is the rod of British power to be forever suspended over our heads? Does Congress put on an embargo to shelter our rightful commerce against the piratical depredations committed upon it on the ocean: We are immediately warned of the indignation of offended England. Is a law of non-intercourse proposed: The whole navy of the haughty mistress of the sea is made to thunder in our ears. Does the President refuse to continue a correspondence with a minister who violates the decorum belonging to his diplomatic character by giving and deliberately repeating an affront to the whole nation: We are instantly menaced with the chastisement which English pride will not fail to inflict. Whether we assert our rights by sea or attempt their maintenance by land—whithersoever we turn ourselves this phantom incessantly pursues us. Already has it had too much influence on the councils of the nation. It contributed to the repeal of the embargo—that dishonorable repeal which has so much tarnished the character of our Government. Mr. President, I have said on this floor, and now take occasion again to remark, that I most sincerely desire peace and amity with England; that I even prefer an adjustment of all differences with her before one with any other nation. But if she persists in a denial of justice to us, or if she avails herself of the occupation of West Florida to commence war upon us, I trust and hope that all hearts will unite in a bold and vigorous vindication of our rights." *

That Great Britain did persist in denying us justice was the firm belief of every Republican the land over. And when the people of the Lexington district sent Clay to the twelfth House of Representatives, and his associates in that House chose him Speaker, they did so because they were determined to have in the future a bold and vigorous vindication of our rights. From the moment he took his seat in the Speaker's chair a new era opens in our history. At last the Republicans had found, what had long been wanted, a leader; a man of the people, young, eloquent, intensely American. Hesitation,

* Annals of Congress, 1810–'11, pp. 63–64.

doubt, timidity, fear of England, now gave way to a bold and well-defined policy of peace or war. Peace if Great Britain did us justice; war if she did not.

When the President's Message had been read, it became necessary to appoint the select committees to whom the important paragraphs were to be referred. As Speaker, the appointment rested with Clay, who chose the members with strict regard to the new policy, and in two weeks' time listened to a report from one of them, every line of which was warlike. It came from the Select Committee on Foreign Relations.* We will not, said they, encumber your Journal nor waste your patience with a history of the wrongs, the injuries, the aggressions known and felt by every one. The cold recital of them would deaden the national sensibility and make callous the public mind. The committee then passed in review the decrees of Berlin and Milan, the Embargo, the Non-intercourse and Non-importation Laws, the Erskine Agreement, the perfidious conduct of England since the repeal of the decrees by France, and the shameful indifference with which the impressment of our sailors had been treated. To wrongs so daring in character, the committee then continued, and so disgraceful in their execution, the people of the United States can no longer be indifferent. We must tamely submit or boldly resist. The time has now come when the national character, so long traduced by enemies at home and by enemies abroad, must be vindicated. If we have not rushed to arms like nations driven by the mad ambition of a single chief, like nations led by the avarice of a corrupted court, it has not been because we fear war, but because we love justice and humanity. The proud spirit of liberty and independence which sustained our fathers is not dead! The patriotic fire of the Revolution still burns and will yet lead the people to those high destinies which are not less the reward of dignified moderation than of exalted valor. But patience has now ceased to be a virtue. The day has come when, in the opinion of your committee, it is the duty of Congress to call out the resources and rouse the patriotism of the people. Then, with the blessing of God, we shall secure

* Annals of Congress, 1811–'12, pp. 373–377.

that redress hitherto denied to our remonstrances, our forbearance, our just demands. To this end the committee offered six resolutions. The six were: that the ranks of the regular army be filled up; that an additional force of ten thousand regulars be raised to serve for three years; that the services of fifty thousand volunteers be accepted; that the President order out from time to time such detachments of the militia as the public service may require; that all ships of the navy fit for sea be instantly put in commission; and that merchantmen be suffered to arm.

As soon as these resolutions were taken up in the Committee of the Whole, Peter Buell Porter rose to explain them. The Committee on Foreign Relations, said he, have no hope of a peaceful settlement of our differences with Great Britain. Her conduct toward us is not regulated by her sense of justice, but by the extent of our submission. For six years past she has been gradually and progressively encroaching on our rights. We have seen her one year advancing doctrines which the year before she denounced. We have seen her one day seizing our ships under pretexts which the day before she was ashamed or afraid to avow. Indeed, she has been steadily and carefully feeling our pulse that she might know what potions to administer, until, if we go on submitting, British subjects will soon be engaged, not only in taking our ships in the waters of our harbors, but in trampling on our citizens in the streets of our cities. Looking at the matter from this standpoint, the committee are strongly in favor of war. We cannot, indeed, cope with England's navy. She is mistress of the sea. But there were two ways in which we can greatly injure her. We can cover the ocean with privateers, we can destroy her fisheries to the north, harass her West India commerce as it passed our doors, annoy her trade along the coast of South America, and plunder her ships at the very entrances to her own ports. We can take from her Canada and the rich province to the eastward. Let such a warfare be begun—a war on land at the public cost, a war on sea at private cost—and we shall in a little while remunerate ourselves tenfold for six years of spoliation of our commerce. This is the kind of warfare contemplated in the resolutions. I entreat

you, therefore, do not vote for the resolutions unless you will fight. Do not raise armies unless you are ready to use them. Those who heard him were ready to fight, and in a few hours the six resolutions were approved by the Committee of the Whole, reported, and the first passed by the House.

The second resolution called for an additional force of ten thousand regulars for three years, and provoked a debate on the evils and dangers of a standing army. Randolph began it. He declared that the resolution contained an unconstitutional proposition, because no money could be voted for a standing army for more than two years, and that such an army was unnecessary, because seven million free Americans had no idea of intrusting their defence to ten thousand mercenaries picked up at brothels and tippling-houses. He would like to know, moreover, what use it was proposed to make of the soldiers. Let the President say they were necessary to protect New Orleans, that they were needed to fight the Indians, that they were wanted to repel invasion from Canada, and he would vote for them. But he well remembered the reign of terror in 1798, and was as much in dread of a standing army now as he had been then. So far as the House was concerned, there was no necessity for answering Randolph. The majority for the resolution was eager in spirit and overwhelming in number. But the war party wished to be fair. They knew, moreover, that in answering Randolph they were speaking not to him and his few followers, but to all their countrymen, to England, to France, and to the whole world. The debate, if it may be so called, which thus sprang up and occupied the time of the House during six days, is interesting for many reasons. Twenty members spoke, yet but two—John Randolph and Richard Stanford—had a word to say against the resolution. The majority took their ground carefully, and stated their position over and over again. There had not, in their opinion, been an hour since 1806 when the United States would not have been fully justified in making war on England. But the prudence, the humanity, the patience, and long suffering which had ever marked her dealings with foreign nations had prevailed. Congress and the President had tried every peaceful expedient known to man rather than attack England when

she was stretching every nerve in her struggle with Napoleon. She, however, had attributed to fear what was due to humanity. Every offer had been rejected; every concession had been followed by a new indignity till from very shame the United States must strike back. This was the will of the people clearly expressed at the polls. No Congress had gone further in concessions than the eleventh, yet how many members of the eleventh had seats in the twelfth? Hardly one half. And what was the feeling of those chosen by the people to take the seats of the sixty-one men rejected? Was it to go on negotiating, go on submitting, go on indifferent to the cries of six thousand American sailors impressed into English service? No! The sentiment of these new members was for war. Let it be clearly understood, then, exclaimed one of the speakers, that these resolutions mean war, and in this lies the difference between the army which Republicans condemned in 1798 and the army Republicans are to raise in 1812. The old army was not for use; the new army is for use. The old army was to extend executive patronage; the new army is to take the Canadas. To contend with the navy of Great Britain is impossible. Happily, it is not necessary. Such is her condition that she can send but a few ships to attack us, and these we can drive from our coast with the frigates we have and a few that we can build. Our war will be chiefly on land. Before determining the force needed for such a war the committee consulted the Secretary of War, and, in accordance with his wishes, which are undoubtedly the wishes of the President, framed the resolution under debate. The result of a war cannot but be beneficial. The loss of the Canadas will end British power, influence, and intrigue in America. Then will the Indians cease the massacre of women and children. Then will the Canadian trade be secured, and the political equilibrium of the republic be made secure. When the vast plains of Louisiana shall be populated the Northern States will lose their power; they will be at the mercy of others. It is wise, therefore, to add the Canadas to the North at the same time that we add the Floridas and Louisiana to the South.

The people, said Randolph, will never submit to be taxed for such a war. The Government of the United States was

framed to provide for the common defence and general welfare. Whoever, therefore, plunges it into an offensive foreign war subjects the Constitution to a strain it will not bear. To the men of Tennessee, of Genesee, of Lake Champlain, a war may be of advantage. Their hemp will bring better prices; they will furnish the troops with supplies and grow rich. But, my word for it, the planters of Virginia will not be taxed to support a war in which they have not the slightest interest and which cannot but add to their present distress. His speeches were long and rambling, abounded in denunciation of England, of France, of John Adams, of General Wilkinson, of the administration, of the plan to take the Canadas, and of the call for a standing army. Such remarks carried no weight, and when the yeas and nays were taken, but twenty-one members voted with him. This was the highest number reached by the minority on any resolution in the series.* Sixteen votes came from New England; four came from Virginia; North Carolina furnished two. All the resolutions having passed by handsome majorities, bills in accordance with them were ordered.

While the committee was at work on their tasks, a bill providing for an additional military force came down from the Senate. The author was William B. Giles, of Virginia, and his purpose was not to aid but embarrass the administration. Madison and the committee had asked for ten thousand men for three years, not because they believed that force sufficient to take Canada, but because they believed that the troops, if raised at all, should be raised at once, and because it was not likely that the recruiting officers could in one year find more than ten thousand men who would enlist for three years of service. Giles proposed to call for twenty-five thousand regulars, enlist them for five years, divide them into regiments of two thousand each, and, whether the ranks were filled or not, commission and keep in pay the entire staff of officers. His purpose

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* Second resolution: Yeas, 110. Nays, 22.
Third " " 113. " 16.
Fourth " " 120. " 8.
Fifth " " 111. " 15.
Sixth " " 97. " 22.

was apparent; nay, he was told to his face that his aim was to drain the Treasury, embarrass the fiscal concerns, and paralyze the best-arranged measures of Government. Yet he persisted, and, by the help of every Federalist senator present, carried through the bill.

On reaching the House, it went at once to the Committee on Foreign Relations. That Madison was then consulted is quite likely, for, when it was reported, the number of troops was cut down from twenty-five to fifteen thousand. On this compromise every war Republican fell with vigor. Their views, however, were best stated by Henry Clay, who, as the House was in Committee of the Whole was out of the Speaker's chair, and seized the opportunity to attack the amendment.

It is admitted, he said, that the troops are to be raised for war purposes. It is also admitted that they are to be used against Canada. The question, then, is, Are they enough? All military men know that when any given number of troops is to be raised, from a quarter to a third must be deducted for sickness and desertion. Of the twenty-five thousand called for by the Senate bill, twenty-one thousand may be considered as fighting-men. Add to this the four thousand already in service, and there will be twenty-five thousand with which to garrison forts along the seaboard and make war. Canada is invaded. The upper province falls and the army moves on Quebec. There will indeed be no European enemy behind the troops, but it is a rule never to leave in the rear an undefended place of strength. As the army marches toward Quebec its ranks will therefore be thinned by drawing off men to hold the chief towns along the route. Much reduced, the invaders at last sit down before Quebec; the city falls, and the army, yet further diminished by the men left behind on garrison duty, moves on for Halifax. Is it not obvious that an army of twenty-five thousand men at least will be needed? The difference between twenty-five thousand and fifteen thousand is precisely the difference between a short war and a long war, between a war fought with vigor and a war of languor and imbecility. As a concession to such Republicans as still held to their old party traditions, hated a standing army, and

dreaded to spend the public money, Clay moved an amendment. He would have the officers of eight regiments commissioned at once. When three fourths of the privates of these eight had been enlisted, he would have the officers of the five other regiments commissioned, and not before. In the end he carried the day, and the House, having changed the eight to six, and made a few other amendments, passed the bill and sent it to the Senate.* Within eight-and-forty hours it came back with four important amendments stricken out almost unanimously. And now the less extreme Republicans began to waver, but the Federalists once more came to the help of Clay. The House receded from all its amendments save one, and on January eleventh Madison signed the bill.† While the document was on its way to the President, Randolph once more returned to the attack. The great army about to be raised might, he said, never be used to wage war. In that event, as the President could not disband them, their time, so far as he could see, would be spent in shouldering their muskets on the south side of some range of buildings. Idleness of this sort led to depravity and dissoluteness of manners. He believed that regular and wholesome labor would preserve the health of the troops, and make the burden such an existence forced them to bear less heavy. If they were employed in digging the President's house or the war office from under ground, their appetites would be better both for their existence and their dinners. He moved, therefore, that, when not fighting, the army should be kept busy building roads, digging canals, laboring on works of public utility. Against this proposition every Republican cried out. Randolph was accused of seeking to degrade the army to the level of the criminals who in Maryland dug canals and in Virginia made shoes, nails, and clothing; of seeking to hinder enlist-

* January 6, 1812. Yeas, 94. Nays, 34.

† For receding from the amendment providing that the officers of but six regiments should be commissioned the yeas were 67, nays 60. For receding from the second, providing that the officers should remain in commission so long as the President thought fit, the yeas were 67; nays, 60. The third amendment, providing that officers should not be paid unless in service, was adhered to; yeas, 49; nays, 76. The fourth amendment, giving the President power to appoint officers during the recess of the Senate, was lost. Yeas, 61; nays, 40.

ment; of wishing to embarrass public measures; and his motion, by a vote of one hundred and two to fifteen, was rejected.

This flurry over, the House went into committee, took up a bill to raise a volunteer corps, and soon plunged into a curious constitutional debate. The bill authorized the President to accept the services of fifty thousand volunteers, to be officered by the State authorities, and called into service by the President. Under the Constitution he could call them in service for either of three purposes—to execute the laws, to put down insurrection, to repel invasion. But these volunteers were to be used for no such purposes. They were to go with the regulars and invade Canada. The question then arose, May the militia be used without the limits of the United States? Almost everybody thought it could not. An amendment was therefore offered requiring each volunteer to sign an agreement to serve without the jurisdiction of the United States. Every variety of opinion was expressed. Some thought militia could be used to chase an invading enemy over the border. Some thought it could be marched into Canada if the States to which it belonged consented. Some thought that, as the Constitution provided for two kinds of troops, the regulars and the State militia, the regulars must be used for offensive war and the State militia for defensive. Others thought the amendment useless, for, said they, if the Constitution does not give the President power to use militia without the United States, how can Congress authorize him to do so? The question was not settled, and the bill when it reached Madison * said not a word on the use of the volunteers beyond our borders.

The war Republicans had now met with their first check. Seemingly it was slight. In reality it was disastrous. It deprived the President of the use of the volunteers in Canada. It left a handful of regulars to fight the battles across the frontier. It went far toward causing that series of shameful defeats which cost us Canada. It was, and this for the time being was more important than all else, the first manifestation of a state of feeling that parted the leaders of the war Re-

* Approved February 6, 1812.

publicans, damped the ardor of their followers, and threw the proceedings of the House into dire confusion.

The immediate cause of this quarrel was a bill, brought in by the Naval Committee, to repair and fit out all vessels of war, build ten new frigates averaging thirty-eight guns each, buy a stock of timber, and construct a dry dock at some convenient place. The question involved was not merely, Shall or shall not ten frigates be built, shall there be a navy large enough to guard our commerce abroad or small enough to defend our ports at home? but, Shall the affairs of this people be ruled henceforth by the Republicans of the old school or by the Republicans of the new? To hate a navy had always been a Republican principle since the day when John Adams brought together the little fleet of ships and frigates which more than once humbled the flag of France. Now, on a sudden, Republicans were asked to build a navy. Every Republican who yielded to that request, who raised his voice or cast his vote for the ships, bade farewell to the party of Jefferson, of Clinton, of Duane, and took his place in the ranks that followed the leadership of Henry Clay. No one knew this better than Langdon Cheves. As chairman of the Naval Committee he opened the debate and fairly stated the issue. "I know," said he, "how many and how strong are the prejudices, how numerous and how deeply laid are the errors which I have to encounter in the discussion of this question. I have been told that a naval establishment is unpopular. It has been hinted that those who become the zealous advocates of the bill will not advance the estimation in which they are held by their associates. But no such considerations can stop me. I wish to lead no man. I am determined not to be blindly led by any man. In acting with a party, I do so because I believe its principles to be the best. But I do not feel myself bound, therefore, to renounce my individual opinions; to take no independent part in the labors of the party to which I belong." Having thus declared himself independent of the traditions of the past, he fell to work earnestly in defence of a new navy. But he went too far. His followers deserted him by dozens. Clay and Lowndes and Calhoun and Porter came bravely to his support. But Johnson and Grundy, men as eager as he for

war, attacked him fiercely. All the old familiar arguments, all the old predictions of evil, all the old terrors used by the Republican press in 1798 to excite the people against a navy, were again resorted to. History, ancient and modern, was ransacked for instances of nations enslaved, of peoples impoverished by their navies. The experience of Tyre and Sidon, Crete and Rhodes, Athens and Carthage, was cited to prove that the moment a people ceased to confine their navy to defence at home, they rushed into piracy, plunder, and war; that the moment a people put forth their strength upon the sea they grew weak upon the land; that their rights were neglected, their burdens made heavy, their happiness and their liberty destroyed. I deny, cried out one speaker, that the United States can maintain a navy without oppressing the mass of the people with the tax-gatherer. Even if a great navy could be maintained it would be dangerous to the peace and tranquillity of the nation. A navy, said another, will increase the executive patronage, for it must be kept in time of peace as well as in time of war. We fought England once without a navy, said a third, and we can do so again. Stirred up by such appeals, the old Republican spirit rose high and the committee refused to build another frigate * or spend one dollar for a dock yard.† Shorn of these provisions, the bill passed both House and Senate.

For the time being the war leaders had lost control. Their majority was gone. They could accomplish nothing; and measures deemed of the gravest importance were defeated. A bill to provide for a uniform militia throughout the United States was lost by three votes. ‡ On a bill to arm the militia, they with difficulty commanded a majority of sixteen. A resolution calling for a committee to frame a bill authorizing a provisional army of twenty thousand men was voted down by

* On the motion to strike out the section the yeas were 62; nays, 59.

† Motion to strike out, yeas, 56; nays, 52.

‡ The militia were to be divided into three classes: minor, junior, and senior. In the minor were to be youths from eighteen to twenty-one, liable for three months' duty in their own State. The juniors were to be men from twenty-one to thirty-one, liable to a year's duty anywhere. The seniors were to be men from thirty-one to forty-five, liable to six months' duty in their own or an adjoining State. Lost: Nays, 58; yeas, 55,

a majority of nine. The refusal to provide these troops was a defeat as crushing as the refusal to build ten frigates. Porter, who moved the resolution, reminded the House that its own acts had placed the country on the verge of war, and that England was well aware of these acts. She knew that Congress was making ready in a good-natured, desultory, easy-going way to capture Canada. Knowing this, she would act, for it was not her habit to strike the second blow. It behooved Congress, therefore, if it really meant to take Canada, to push forward its preparations with vigor and decision. Had it done so as yet? A law had been passed to raise twenty-five thousand regular troops, but no reasonable man could say that they would be raised in time to render any service for a year to come. Their officers were not even appointed. They were to be enlisted in every part of the country from Maine to Tennessee. It would take months to collect them after they had enlisted, and begin the march to the frontier. The regulars, then, were not to be counted on. Neither were the fifty thousand volunteers; for it was an open question whether they could be sent into Canada. As the law stood, if they went at all it must be of their own volition. The President could not send them. What force, then, had been given the President with which to make war? Practically not one man. Yet the Committee on Foreign Relations were every day blamed for not reporting a declaration of war. Let the President be given a provisional army, an army into which the young men who composed the militia would gladly enlist and go wherever their services might be needed. But he appealed in vain. Even Cheves and Lowndes, Grundy and Troup, deserted him. When the leaders thus fell apart, when the man who had begged for an efficient navy voted against an efficient army, the situation was serious. Very wisely they stopped, abandoned all hopes of securing further means of defence, and turned their attention to raising money to pay the cost of the few troops and ships that had been given them.

The duty of suggesting the manner of defraying the charges of war belonged, of course, to the Committee of Ways and Means and was diligently performed. Toward the middle of February the chairman presented a report covering the three years

1812, 1813, and 1814. The ordinary expenses for 1812 would, the report stated, be something over nine millions, could be paid out of the receipts and the surplus, and leave a trifle in the Treasury. The extraordinary expenses would be eleven millions, and should be met by a loan. The public-debt account would need nearly six millions, which the Commissioners of the Sinking Fund should borrow. In 1813 there would be a deficit of something over six and in 1814 of something over seven millions, and these must be made good by taxation. The new taxes—the war-taxes as they came to be called—were to be of three great classes: duties of import and tonnage, internal duties, and a direct tax of three millions. The first class should comprise an additional duty of one hundred per cent. on imported goods, wares, and merchandise, a new tonnage duty, an increase of twenty-five per cent. in drawbacks on exported goods, and a duty on salt. The internal duties should be laid on licenses to distil liquors from foreign materials, on licenses to retail wines, spirits, and foreign goods, on sales at auction of foreign goods, on sugars refined, on pleasure carriages, and a stamp-tax fashioned on the hated stamp-tax of John Adams.

A bill to raise eleven millions by loan bearing six per cent. interest and payable in twelve years passed at once without trouble, and by a majority of sixty-three. The remaining suggestions were then reported by the Committee of the Whole to the House in the form of resolutions. All went well with them till the resolution to tax salt was reached, when a violent clamor was raised. Representatives from the middle country complained that it would fall on them and not on the people of the seaboard or the West. Along the Atlantic coast the farmer did not need to salt his cattle. In the West were many salt-works which supplied the people at ten cents per bushel. The farmers in the middle country had no such resource, and by them the proposed tax of twenty cents a bushel on imported salt would be paid. This was unjust. This was admitted to be so, but they were told not to look at any one tax. They should look at the whole system of taxation. The salt-tax would undoubtedly bear a little heavy on one part of the community, the tonnage-duty on another, the spirit-tax on another, the carriage-tax and

the stamp-tax on yet others. But, taking the system as a compromise, it was as fair and equal as any that could be produced. The majority were now divided on geographical grounds; the spirit of sectionalism was rife, and the resolution to tax salt was lost by three votes.

So bitter was the feeling of the South against the East and West that a motion was made to change the whiskey-tax from a tax on the capacity of the still to a tax of twenty-five cents a gallon. Clay ruled that the motion was out of order. All propositions to raise revenue must, he said, be first discussed in Committee of the Whole. The House then adjourned from Friday to Monday. During the recess every effort was made by the war leaders to close the breach and win back their majority. Southern members were told that the system of taxation proposed was one of compromise and concession. It must stand or fall as a whole. If the salt-tax were rejected because it would press heavily on the people of the South, the land-tax would have to be rejected because it would press heavily on the people of the West, and the system would go to pieces. So successful were these arguments that when the House met again a reconsideration of the vote was moved, carried, and a resolution to tax salt passed by twelve majority. But the Republicans were far from united. Again a motion was made to recommit the resolution relating to the liquor-tax in order that whiskey might be taxed at twenty-five cents the gallon. Had this been done, the Maryland fruit-grower, who distilled his two, three, or four thousand gallons of apple brandy, would have to pay five dollars into the Treasury, but the rye-growing farmer of Pennsylvania, of Virginia, of Kentucky, who distilled four thousand gallons of whiskey, would have to pay one thousand dollars into the Treasury. The gross injustice of this distinction, and the meanness of the spirit which prompted it, compelled the member from Maryland to withdraw his motion from very shame, and the resolution passed as the committee had reported it. On March fourth, all the resolutions having been passed, the committee was instructed to report by bill. It was resolved at the same time that none of these taxes should be laid unless war actually began, that none should continue longer than one year after peace, and that each State

might assume and pay so much of the direct tax as fell to its share.

With the help of the Federalists the war Republicans had now dragged Congress to the pass where it must decide, and decide quickly, the question of war or peace. That the question of war could not be raised with any hope of success in the present temper of the House was apparent. It was with the utmost difficulty, and with all the help the Federalists gave, that enough votes could be had to carry through what little legislation had been accomplished. It was certain that many Republicans who had voted for a regular army they did not believe could ever be enlisted; who had voted for volunteers that would never cross the border; for manning frigates that could never quit our harbors; for taxes not to be laid till war began—would shrink from an open declaration of war. What the Federalists would do was most uncertain. They had, it was true, voted for war measures. But they had been silent in debate and had given no reason whatever for the votes they cast. That the aim of this conduct was to embarrass the administration was no secret. But that they would actually go so far as to declare war on their old friend and ally seemed hardly reasonable. Yet such was their intention. Silent as they were in debate, they were talkative enough in the closet of the English Minister. To him they told all—that they would vote for a declaration because they saw no end to commercial restrictions save in war; that the war would not last nine months; that the Republicans would before that time be turned out; and that the Federalists, having everything their own way, would then make a solid peace with England.*

Of this the war leaders knew nothing, and, in the hope of rousing a strong war spirit in that wing of the party most lacking in it, Madison and his advisers decided to make use of some papers fortune had thrown in their way. Late in the autumn of 1811 a ship reached Boston bearing two men known to their fellow-passengers as John Henry and Count Edward de Crillon. Each had a grievance. Crillon, who traced descent from one of the oldest families in the French

* Foster to Wellesley, December 11, 1811.

nobility, who owned great estates in Lebeur near the Spanish border, who was connected by marriage with the Maréchal Duc d'Istrie, the favorite of Napoleon, had been so unhappy as to incur the anger of the Emperor and had fled to England. Henry was the man who in the winter of 1808 travelled through New England and sent back to the Governor-General of Canada long accounts of the angry feelings of the Federalists.* For this he had been rewarded by the late Governor Sir James Craig. But, thinking the reward far beneath his deserts, he went to London and there demanded thirty-two thousand pounds. At London he was treated with great distinction, was received in the highest circles, was complimented with a ticket as member of the Pitt Club, and in the course of his social pleasures fell in with Count Edward de Crillon. From Government, however, he could get nothing more than a recommendation to Sir George Prevost, Governor of Canada, and the offer of a passage to Halifax in a ship-of-war. Enraged at this treatment and burning for revenge, he determined to return to the United States, took passage in a ship bound for Boston, and on going to Ryde to await its arrival, again met Count Crillon. The Count also was bound for America on the same ship. But head winds detained her for eight weeks in the Downs. During this time, and on the voyage over, a strong friendship sprang up between the two. Crillon expressed the greatest sympathy for Henry, urged him to sell his papers to the United States, and offered to enlist the services of Serurier in his behalf. On reaching Boston, Crillon accordingly wrote to the French Minister and told the story of Henry and his papers. No notice was taken of his letter, and Crillon came to Washington, called on Serurier, and by him was sent to Monroe. The price asked for the letters was one hundred and twenty-five thousand dollars. The sum offered was fifty thousand. Henry was then called from Boston, and, after extorting a promise that his papers should not be given to the public till he was safe at sea, sold them. On the tenth of February the money was paid partly out of the contingent fund for foreign intercourse and partly out of the contingent fund of the

* History of the People of the United States, vol. iii, pp. 285–286.

Department of State.* The next stage which left Washington carried off John Henry on his way to New York. Thence he was to sail on the very first vessel, merchantman or ship-of-war, that left the port for France where he was to take possession of a fine estate he had purchased from Crillon. It was on Saturday, the seventh of March, that Monroe learned that Henry was really off for Europe. On Monday, the ninth, the letters were laid before Congress.†

First in the series was a note from Secretary Ryland, expressing the Governor's high appreciation of Henry's work during the winter of 1808 and inviting him to undertake another mission to Boston during the winter of 1809. Then came the instructions. Henry was to study the state of public opinion on politics and on the prospect of war, find out the true strength of the two great parties, and which was likely to prevail. It was supposed that if the Federalists came back to power in New England they would seek to break up the Union. In that event would the leaders look to England for help? If so, all communications with the Governor of Canada were to go through the hands of Henry. It is needless to say that the mission was accepted, and long letters written from Burlington, from Windsor, from Amherst, and from Boston. The excitement over the Force Act and the embargo was then at its height. Gathering his impressions of public feeling from the rumors and the angry talk he heard at the village taverns on the way, he represents the people as ripe for rebellion. He declares that the Governor of Vermont will not call out the troops to enforce the embargo, and that in case of war he will keep his State neutral. But the Federalists, he predicts, seek an alliance with England. As he passed through New Hampshire what he heard convinced him that war was near. At Boston he remained till the proclamation of Madison announcing the Erskine agreement led to his recall. Yet his letters contain nothing of the slightest importance. No names are mentioned, no facts are stated, no accounts of the condition of public feeling are given which could not have been written by

* Copies of the two checks may be seen in the True American, March 21, 1812.

† Annals of Congress, 1811–1812, pp. 1162–1181.

a man who had never set foot in Boston, who had never even landed on our shores, and who, living in the heart of London, depended for his knowledge of our politics on the New England Palladium and the Boston Gazette. It is impossible to read the Henry letters without being convinced that their value was justly estimated by Lord Liverpool when he refused to pay the author one shilling. The long letter of instructions from Sir James Craig and the short note from Robert Peel, Secretary to Lord Liverpool, do indeed prove that Henry was employed to find out if New England was ripe for rebellion. But beyond this the collection is worthless. Nay, more; when the letters published by Congress are laid beside the originals, still preserved in London, it appears that they are not even honest copies. Nor was this the only fraud connected with the affair. Crillon, after lingering in Washington till he could no longer do so with safety, suddenly announced his intention of hurrying back to France, throwing himself at the Emperor's feet, and imploring pardon. Nothing could check his eagerness, and on April first he left Washington laden with despatches to Barlow and Bassano. But his courtly manners, his charming conversation, his patriotism, his admiration for Napoleon, had not been forgotten by the men who had lionized him at Washington when it began to be whispered that he was an impostor.* The whispers were soon confirmed by positive statements, and Madison, the Secretaries, and society learned with deep mortification that no such person as Count Edward was known to the Crillon family; that no such officer was known in the army of France; that no such estate as that of St. Martial "in Lebeur near the Spanish border" existed; and that the man on whom Crillon drew his drafts in favor of Henry had been dead five years. It remained, however, for posterity to discover that the pretended count was in reality a secret agent of the French police.

That the documents produced no result proportional to the sum they cost is certain;† that the war spirit was in any

* Columbian Centinel, June 3, 1812.

† By a unanimous vote, the House sent the letters to the Committee on Foreign Relations. The committee examined Crillon, and reported. The report was laid on the table. Annals of Congress, 1811–'12, pp. 1220–1224. The Senate

degree roused; that the spring elections were affected; that the legislation which followed was at all produced by these publications may reasonably be doubted. The cries of "British intrigue," "British party," "British gold," "British agents," were as old as the days of John Jay's treaty and Lord Dorchester's speech to the Indians. Nothing which Henry had to tell began to be as damaging to the Federalists as the scores of essays with which their newspapers in New England had abounded for ten years past, and which had been suffered to go unnoticed. The time had come when the question of war or peace depended quite as much on the President as on Congress or the people. In a few months, at the utmost, a successor to Madison must be nominated. Should the choice of the caucus fall on a man strongly in favor of the system of Jefferson, the system of embargoes, commercial restrictions, peaceful coercion but not war, the ardor of Congress would cool rapidly, and the "war-hawks" would be forced to give up all hope of success. The wish of a large part of the Republican party was that Madison should succeed himself. But that Madison was for war was doubtful. Many an honest follower of his could not believe that he was in earnest; could not believe that he would plunge the country in a contest with England before a dollar had been raised, a soldier enlisted, or a ship made ready for sea. To remove this doubt was all-important to Clay, and the story runs that he and a number of friends waited on Madison, threatened to forsake him in the caucus, and thus coerced him into war.* That the story is true cannot be positively stated. It was indeed openly repeated in Congress.† A member of the House even claimed to have been one of those who made the threat.‡ It is certain that Clay did place before Monroe a plan of action which he wished the administration to follow.# It is certain that the plan was followed.

called on the Secretary of State for the names of the persons alluded to by Henry, was told that the Secretary did not have them, and ordered the answer printed. Ibid., p. 169.

* Hildreth's History of the United States, vol. vi, p. 298.

† Speech of Hanson, of Maryland. Annals of Congress, 1813–'14, p. 254.

‡ James Fisk, of Vermont. The Statesman's Manual, Edwin Williams, vol. i, p. 348.

Monroe's Correspondence, March 15, 1812.

It is certain that no caucus met till, by following it, Madison had fully committed himself to war, and it is certain that in the caucus the war members gave him a warm support. Yet all this does not prove that Madison was coerced.

The plan proposed by Clay was an embargo for thirty days, and then a declaration of war if, meanwhile, good news did not come from England. Though Madison was ready to make an appeal to arms, he was not willing to accept an embargo. For a year past he had boldly asserted that the Berlin and Milan decrees were repealed, and that the United States was bound by a contract to trade with France. A general embargo meant the stopping of this trade, meant the placing of France on the same footing with England, and must, in the eyes of the President, have been a flagrant violation of his pretended contract. But his scruples were now removed by France. On the ninth of March an American brig called the Thames, from Portugal, reached New Haven, where her captain, Samuel Chew, appeared before a notary and made a statement under oath. He swore that about the middle of January, 1812, he set sail from St. Ubes for New Haven with a cargo of salt and fruit, and that when a fortnight out he fell in with a French squadron of two frigates and a sloop-of-war. The boarding-officer informed him the squadron had left Nantes early in January with orders to burn American ships trading with an enemy's ports; that, in obedience to these orders, the ship Asia, from Philadelphia to Lisbon, and the brig Gershom, from Boston to Oporto, both laden with flour and corn, had been burned at sea; and that the Thames should meet the same fate on the morrow. In the course of the night the French commodore changed his mind, and on the morrow sent the crews of the Asia and the Gershom on board the Thames, gave Captain Chew a document written in French, and dismissed him. The crews were landed at St. Bartholomew's, but the document and the sworn statement Chew sent to Washington, where, on the twenty-fourth of March, Timothy Pitkin, Jr., read them to the House of Representatives. To maintain the fiction of a repeal of the decrees was now impossible. Not a man in the whole country would believe it. Longing to be revenged for the exposure of the Henry letters, the Federalist press set upon the administration

with taunts, jeers, and, what was worse, with new affidavits from captains whose ships had been burned by the French. Should these acts of piracy go on, war with France would be inevitable. But the only way to stop them was to keep American ships at home, and to keep American ships at home there must be an embargo. The measure which, when Clay marked out his policy, had seemed dangerous, thus came to seem necessary, and Monroe, having sent for the Committee on Foreign Relations, informed them * that Madison was ready to recommend an embargo if the House would give it support.† The committee answered that the House would support it, and on April first the secret message arrived, recommending a general embargo for sixty days. Peter B. Porter brought in the bill; Clay made a strong appeal in its behalf; the majority cut off debate with the previous question, and, rushing the bill through all its stages, passed it at nine that night. ‡ As the Senate was about to begin business the next forenoon two members of the House appeared, delivered it to the Vice-President, and asked for instant action. Instant action was taken, and on the following morning two senators carried back the bill with two amendments to the House? # And now the peace party made one more desperate struggle for peace, and carried the Senate amendment extending the embargo to ninety days. All manner of reasons were given. ‖ Some were anxious that the ships of constituents might be brought home before the war began. Some were eager to put off war. Some wanted time for negotiation. Had the wishes of these men prevailed, James A. Bayard would have been despatched to London, would have laid an ultimatum before the Prince Regent, and the war for commercial independence would never have been fought. This scheme Clay defeated, and on the fourth of April the embargo began.

Though the debates had gone on with closed doors, it was

* March 31, 1812.

† Speech of John Randolph, April 1, 1812. Annals of Congress, 1811–'12, p. 1593.

‡ April 1, 1812.

April 3, 1812.

‖ Madison to Jefferson, April 24, 1812. Madison's Writings, vol. ii, p. 532.

no secret that an embargo was soon to be laid. For ten days past it was matter of public notoriety that a caucus had been held at Washington to discuss a declaration of war; that the members from New York and New Jersey had bitterly opposed such a measure; that a compromise had been effected, and the agreement reached that, when the New England election was over, an embargo should be laid on ships and commerce.* Many thought the rumor without foundation. But the Baltimore merchants were so well informed that the enormous shipments they made of flour attracted newspaper comment.† So openly and so positively was the assertion made that John Randolph, happening to be in Baltimore, heard it and hastened back to Washington, for, as a member of the Committee on Foreign Relations, the report concerned him deeply. At Washington he soon learned that the rumor was true. But when the committee decided to recommend an embargo, and an attempt was made to pledge the members to secrecy, Randolph refused to be bound. The committee, he held, had no power to lay injunctions to secrecy. Even if they had, it would do no good. To his knowledge, the people of Baltimore already knew that an embargo was coming. This statement induced Calhoun, the moment the committee rose on March thirty-first, to inform Quincy, Lloyd, and Emott, in order that one commercial city might not be more favored than others. By Quincy and Emott an express was instantly sent eastward. On April first he reached Philadelphia‡ and showed the despatch to James Milnor, a Pennsylvania member then in the city. On April second the news reached New York, where in a few hours flour went up one dollar a barrel and freight twenty per cent. In three days' time seventy ships had been loaded, cleared, and were out of sight of Sandy Hook.# By the almanacs of that day the post-road distance from Washington to Boston was four hundred and ninety-six miles. Yet this great space was covered in seventy-six hours.

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* Wilmington Statesman, March, 1812. Copied in True American, March 26, 1812.

† Baltimore Federal Republican, March 25, 1812.

‡ True American, April 2, 1812.

Commercial Advertiser, April 8, 1812.

Within the next eight-and-forty hours eighty-five ships left port. Some got off without hindrance, but twenty were detained by bad weather and head-winds in the outer bay till news of the passage of the law reached the Collector. Signals were instantly hoisted on Fort Hill; but the weather was thick, the warnings could not be seen, and, before the captains were aware of the danger, a revenue cutter was upon them demanding their sea-papers. Some slipped their cables and went out despite the fog. More than half were detained.

For a moment the gravity of the situation was lost sight of. The news had come in the closing hours of the most exciting campaign that had ever yet taken place in Massachusetts. A year of complete Republican control had almost produced a social revolution. By one law the inferior courts were reorganized; by another, the right to divert parish taxes from the Congregational minister to any other was secured to the tax-payer; by another, the franchise was extended, and the property qualification, which had existed since 1692, was ruthlessly swept away. Any man could now vote for town officers who was twenty-one years old and had lived one year in the town. In all other town affairs he could have a vote if he had paid a poll-tax. But the two laws which set the State aflame were the Districting Act and the act which made the pay of the representative a charge on the State Treasury.

Provision was made by the Constitution of Massachusetts for forty senators to be chosen by the people of such districts as the General Court should mark out. In using this power the General Court was to make not less than thirteen districts, nor give more than six senators to any one. Just how many any district should have was to depend on the proportion of public taxes that district paid. Until the General Court ordered otherwise, the Constitution further provided that each one of the thirteen counties of the State should be a senatorial district. As other counties were formed this principle of making each county a district was not departed from, and what was a temporary provision became an established usage with all the force of law. This usage the Republicans now laid hands on and destroyed. At last, after years of persistent effort, they controlled the Senate. That control must be kept, and to

keep it they rearranged the senatorial districts without regard to county lines, overcame Federalist strongholds with Republican strongholds, cut Worcester County in two, joined Bristol and Norfolk, attached some of the towns of Suffolk to those of Essex, and in the next Senate had twenty-nine senators out of forty. The thing was not new in our politics, for it had some years before been tried in Virginia.*

Having pulled down one time-honored custom in order to secure the Senate, the Republicans pulled down another to secure the House. In that branch of the Legislature each incorporated town of one hundred and fifty ratable polls or less sent one representative, and for every two hundred and twenty-five ratable polls above one hundred and fifty, one representative more. Expenses incurred in going to and coming from the General Court were paid out of the State Treasury, but the daily pay of the member was borne by the town that sent him. Should a town fail to elect its delegates because of the cost, the House could fine it. In consequence of these things, it became customary for the poorer and smaller towns to elect representatives, send them to the General Court, have them remain till government was organized, and then come home. As many of these little places were Republican, their votes were lost, while the wealthy commercial towns, strongholds of Federalism, kept up a full delegation. To counteract this a law was passed by which the rich Federalist cities were taxed in order to pay the salaries of delegates from the poor Republican towns. In other words, the pay of members of the General Court was made a charge on the State Treasury, and the money needed was raised by increased taxation. In 1812 the sum required was over ninety-three thousand five hundred dollars, and, as apportioned among the towns, produced some curious contrasts. Thus in the town of Hull there were thirty-two ratable polls. Under the old system the member would probably have attended for a few days and no more. Under the new system he was present during the whole session, and received as salary three times as much as the town of Hull paid in State taxes. Salem was entitled to twelve members,

* Life of Patrick Henry, by M. C. Tyler, pp. 313–315.

yet it was compelled to pay a sum equal to the compensation of twenty-three members. The share of Roxbury was seven hundred and thirty-two dollars, yet the cost of its member the year previous was but two hundred and eighty-four dollars.

Innovations such as the Districting Law and the Salary Law would of themselves have been sufficient to make the campaign intensely exciting. But the two candidates for Governor, Elbridge Gerry and Caleb Strong, had hardly been nominated when every mail from Washington and every ship from abroad brought intelligence more and more exasperating. The new loan of eleven millions; the proposed new land-taxes, excises, and stamp duties; the story of the orders from the French admiralty to burn, sink, and destroy American vessels; the deposition of Captain Chew that the burning had begun; the Henry letters; and, on the very eve of the election, the embargo, roused the people and brought out almost every voter in the State. Never had there been such an election. One hundred and four thousand votes were cast. When they were counted, Strong was found to have sixteen hundred more than Gerry. Massachusetts was lost to Republicanism.

The exultation over the result of the elections had not subsided when the Federalists found new cause for rejoicing in the failure to place the eleven-million loan. Subscriptions were opened on the first and second of May in all the chief seaport cities from Portsmouth to Charleston. The advertisement of the Secretary of the Treasury and the comments by the newspapers had made the time and places of subscription well known to everybody. The terms were thought liberal. For every hundred dollars taken, twelve dollars and a half were to be paid down, and a like sum on the fifteenth of each month from June to December, both inclusive. Six per cent. was to be the rate of interest, and twelve years the term of the loan. Republican journals vied with each other in urging the people to subscribe, to be liberal, and to take the bonds with the same eagerness with which they had so often competed for the stock of banks, turnpike companies, manufacturing companies, and companies to build bridges. When, however, the books were closed on May second, not quite two

millions had been subscribed by the people,* and but a little over four millions by the banks.†

Small as was the amount purchased by individuals, it was, when judged by past experience, quite large. In 1796 one half of a five-million six-per-cent. loan was offered to the people without one dollar's worth being taken for several weeks. Nor did the people ever buy more than eighty thousand of the two and a half millions of stock offered them. Again, in 1798, a six-per-cent. loan was advertised. It ought to have been popular. Federalism was triumphant. All over the land Federalists were mounting the black cockade, associating, enlisting, voting addresses to Adams, and singing their national songs. Millions for defence, not a cent for tribute, was the cry, and this money was to be spent on the navy. Yet the total amount of stock subscribed for and issued was but a trifle over seven hundred thousand dollars. Now, in a day of great financial distress, the people had subscribed almost two millions. Nevertheless, the result was most discouraging, and carried with it a meaning not to be misunderstood. In New England the cry had been: "No commerce—no loan," "Let those who want war pay for the war," and in all New England, from Eastport to the New York border, not a million was obtained. The South had little to give; yet from that vast region between the Potomac and Florida but seven hundred thousand was collected. Failure to subscribe in New England was undoubtedly largely due to the bitter animosity felt toward the administration and its ways. But the small amount of the stock taken elsewhere was to be ascribed to the low rate of interest, to the great number of banks the people had formed and were about to form, and to the large profits they expected these institutions to make for them.

As the month began, so it went on, with one discouragement after another, to the close. In Massachusetts the Federalists carried the House of Representatives. In New York they secured the Assembly. Regions supposed to be warmly Republican broke out in open opposition to the embargo and besieged Congress with petitions for its repeal. The death of

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* $1,928,900. † $4,190,000.

the Vice-President late in April, the caucus nomination of Madison and Gerry in May, and the excitement in the wheat-growing counties of New York over the embargo, encouraged the discontented Republicans to defy the administration and nominate De Witt Clinton for the presidency. Every mail from the South brought news of warfare on the Spanish border. The Hornet came back from France without evidence that the French decrees had been repealed, and the English Minister communicated to Monroe renewed assurances that England would not recall her orders.

Congress meantime seemed dazed. The warlike spirit which marked the opening weeks of the session had gone down. Indeed, it was with the utmost difficulty that the war party could prevent the House from agreeing with the Senate to take a recess from the twenty-ninth of April to the eighth of June. As it was, many of the members went home on leave with the understanding that no measures of a war nature should be taken during the month of May.* As the month drew to a close, a rumor was current that on Monday, the first of June, the House would be asked to declare war. The rumor was well founded, and about noon on that day Madison's private secretary delivered at the table of the Speaker, and at the table of the President *pro tempore* of the Senate, a packet the contents of which, he said, were confidential. When opened and read, it proved to be the long-expected war message.

Going back to the year 1803, Madison charged Great Britain with a course of conduct insulting to the independence and neutrality of the United States, and arranged her hostile acts in four classes. Her cruisers had violated the sanctity of the American flag on the great highway of nations by seizing and carrying off persons sailing under it. Her cruisers had violated our maritime rights by hovering on our coasts, harassing our incoming and outgoing ships, and wantonly shedding the blood of our citizens. She had, under pretended blockades, without the presence of ships-of-war to make them

* On May 13th the House passed a resolution requesting the absentees to return prior to June 1st.

valid, plundered our commerce in every sea. She had, not content with these occasional expedients for ruining our trade, resorted at last to the sweeping system of blockades known as orders in council, which she had moulded and managed as best suited her politics, her commercial jealousy, or the avidity of her cruisers. Whether the United States should remain passive under these progressive usurpations, or, meeting force with force, commit a just cause into the hands of the Almighty Disposer of events, was a solemn question which the Constitution wisely left with Congress. In urging Congress to an early decision, he did so in the happy assurance that, be the decision what it might, it would be worthy of the councils of a virtuous, free, and powerful people.

Obedient to this request, the House acted with great promptness. On the third of June, Calhoun, for the Committee on Foreign Relations, reported in favor of war, and on the fourth the bill making the declaration reached the Senate.

When the vote cast in the House on that memorable day is examined,* it appears that not a representative from Ohio, Kentucky, Tennessee, South Carolina, or Georgia voted for peace, and that not a representative from Rhode Island, Connecticut, or Delaware voted for war; that in Massachusetts,

* The vote in the House of Representatives stood:

Name of State.	Members present.	Members absent.	For war.	For peace.
New Hampshire	5	..	3	2
Vermont	4	..	3	1
Massachusetts	14	3	6	8
Rhode Island	2	..	..	2
Connecticut	7	..	..	7
New York	14	3	3	11
New Jersey	6	..	2	4
Delaware	1	..	..	1
Pennsylvania	18	..	16	2
Maryland	9	..	6	3
Virginia	19	3	14	5
North Carolina	9	3	6	3
South Carolina	8	..	8	..
Georgia	3	1	3	..
Ohio	1	..	1	..
Kentucky	5	1	5	..
Tennessee	3	..	3	..
Total	128	14	79	49

New York, and New Jersey the majority was for peace; that in Pennsylvania, Maryland, Virginia, and North Carolina the majority was for war; that, in short, the Eastern and Middle States, with two exceptions, were against war, and the Southern and Western States were for it.

The deliberations of the Senate consumed two weeks, so that it was not till the eighteenth of June that the act was passed and approved by Madison. On June nineteenth the proclamation was issued. As the riders hurried from Washington to spread the news throughout the land, Madison visited the department of war and of the navy, "stimulating everything," said one who saw him, "in a manner worthy of a little commander-in-chief, with his little round hat and huge cockade."

BRITISH POSSESSIONS
DISPUTED BOUNDARY
DIST. OF MAINE
LAKE SUPERIOR
LAKE MICHIGAN
LAKE HURON
LAKE ERIE
LAKE ONTARIO
TO INDIANA TY.
ILLINOIS TERRITORY
LOUISIANA
WESTERN TERRITORY
INDIANA TERRY.
MICHIGAN TERRITORY
OHIO
KENTUCKY
TENNESSEE
MISSISSIPPI TERRITORY
ORLEANS TERRITORY
WINNEBAGO & MENOMONEE INDIANS
OTTAWA & CHIPPEWA INDIANS
IOWA INDIANS
SAC & FOX INDIANS
MIAMI INDIANS
POTTAWATOMIE INDIANS
CHOCTAW INDIANS
CHICKASAW INDIANS
CHEROKEE INDIANS
CREEK INDIANS
CLAIMED BY U.S.
SPANISH POSSESSIONS
GULF OF MEXICO
ATLANTIC OCEAN
NEW HAMPSHIRE
VERMONT
MASSACHUSETTS
CONN.
R. I.
NEW YORK
PENNSYLVANIA
NEW JERSEY
DEL.
MD.
D.C.
VIRGINIA
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
MAP
Showing in Five Degrees of Density the Distribution of the
POPULATION
OF THE
UNITED STATES
EXCLUDING INDIANS NOT TAXED.
Compiled from the Returns of Population at the Third Census, 1810.
NOTE.
Centre of Population 39°11.5′ N. 77°37.2′ W.
Under 2 inhab. to the Sq. Mile
2-6 inhab. to the Sq. Mile
6-13 " " "
13-45 inhab. to the Sq. Mile
45-90 " " "
90 and over " "
Cities over 8,000 inhabitants in solid color, in circles proportionate to population.

CHAPTER XXII.

ECONOMIC STATE OF THE PEOPLE.

After nine-and-twenty years of peace the people of the United States were thus a second time at war with Great Britain. Before attempting to narrate the events of that singular struggle it will not be amiss to describe the marvellous prosperity which, in spite of French decrees and British orders, in spite of embargoes, in spite of acts of non-intercourse and acts of non-importation, of confiscations, of burnings, of plunderings, of the unwise conduct of congresses, presidents, and legislatures, had during these nine-and-twenty years been built up by the thrift, the energy, the self-reliance of the people.

Between the day when our fathers celebrated, with bonfires and with bell-ringing, the return of peace, and the day when, discordant and disunited, they read the proclamation renewing war, the area of our country had expanded from eight hundred thousand square miles to over two millions; the people had increased from three millions and a quarter to seven millions and a quarter; the number of States, from thirteen to eighteen; and five Territories—political divisions unknown in 1783—had been established. Forty-nine treaties and conventions had been made with the Indians, their title to occupancy extinguished, and vast stretches of country, once their hunting-grounds, had been thrown open to settlement, and were being rapidly covered with villages and with farms. Had a line been drawn around the frontier in 1790, it would, judging from the best evidence now attainable, have been thirty-two hundred miles in length, and would have enclosed a settled area of two hundred and forty thousand square miles.

Had a similar line been drawn in 1812, it would have been but twenty-nine hundred miles long, yet it would have enclosed a settled area of four hundred thousand square miles. The frontier line now ran due west through southern Maine from Eastport to the head-waters of the Connecticut river, across New Hampshire and Vermont, around the Adirondacks on the north to the St. Lawrence, down the St. Lawrence and the southern shores of Lakes Ontario and Erie to the Cuyahoga river, where Cleveland stood and the Indian boundary-line began. Beyond this no white man could go for purposes of settlement. The frontier therefore followed the Indian boundary across central Ohio and eastern Indiana to the mouth of the Kentucky, went down the valley of the Ohio to the Mississippi, up that river to the Missouri and back to the Tennessee, which it followed to its source in the mountains, crossed the mountains to their eastern slopes, and, heading the waters of the Santee and the Savannah, skirted the Altamaha to the sea. Separated from the frontier by great tracts of wilderness were the outlying settlements at Detroit, at Michilimackinac, at Green Bay, at the mouth of the Arkansas river, in the Territory of Mississippi, and in the new State of Louisiana. Roughly speaking, four fifths of the whole area of the United States had not a white settler upon it.

The region whence the Western settlers came was, of course, the Atlantic seaboard, for the foreigners who each year landed on our shore were still very few in number. Yet it must not be supposed that the movement of people from the Atlantic States had been uniform or steady. The returns of the third census show that from Rhode Island, from New Jersey, from Delaware, and Maryland, migration had almost ceased, and that in them the percentage of the increase of population for the census period ending in 1810 was very much greater than for that ending in 1800. From Massachusetts and Connecticut the movement had been steady, and no material change is noticeable in their percentages at the two periods. Elsewhere the migration had been heavy, and had gone chiefly into the States of New York, Ohio, Kentucky, and Tennessee.

In entering these States the emigrants had, as before, marched forward in three great streams. The northern, made

up largely of people from New England, Pennsylvania, and Maryland, had pushed out into western New York, and had dotted the whole region from Utica to Buffalo with towns and villages. In 1790 New York, from a meridian * through Seneca Lake westward to the Canadian boundary, was one huge county.† Before 1812 that same region had been cut into seven. In 1790 there were in the entire State but sixteen counties. In 1812 there were forty-five counties, four hundred and fifty-two towns, and more than three hundred villages of at least thirty families each. Buffalo now existed, and Lewiston and Batavia, and Maysville at the head of Chautauqua Lake. The town of Erie had been founded in Pennsylvania, and Cleveland in Ohio.

The second stream during the last ten years had poured down the Ohio valley, had peopled all southern Ohio, had raised Indiana to a Territory of the second grade, had overrun Kentucky and Tennessee to the Indian boundary, and, reaching the banks of Tennessee river, had begun to push southward into what is now Alabama. The third stream had gone as far as the Altamaha river, where the Indian country stopped it.

From this rush of people into the new country came economic consequences of a most serious nature. The rapidity of the movement and the vastness of the area covered made it impossible for the States to do many of the things they ought to have done for the welfare of their new citizens. The heaviest taxes that could have been laid would not have sufficed to cut out half the roads, or build half the bridges, or clear half the streams necessary for easy communication between the new villages and for successful prosecution of trade and commerce.

In the well-populated parts of the country along the seaboard the people seemed disposed to remedy the evil themselves, and for some years after the close of the Revolution numbers of lotteries were started to build bridges and improve roads. This was noticeably the case immediately after the adoption of the Constitution. The funding of the Federal

* Beginning at the eighty-second mile-stone on the Pennsylvania line.

† Ontario.

debt, the assumption of the State debts, the restoration of public credit, called out from their hiding places hundreds of thousands of dollars nobody supposed existed. Investments were sought in every direction. Banks were opened, canal companies were started, turnpike companies were chartered, and their stock subscribed for in a few hours. It seemed for a time that internal improvements were to be the economic feature of the last years of the century; but suddenly the European war began. France opened her West Indies. A splendid carrying trade sprang up. Money was instantly diverted to ships and commerce, and many a plan for internal improvement languished and was abandoned. But the movement of the people westward not only went on, but went on with increasing rapidity. The high price of wheat, of corn, of flour, due to the demand for exportation, sent thousands into the Genesee country and the borders of Lake Champlain to farm, and from them came back the cry for better means of transportation. The people of the shipping towns were quite as eager to get the produce as the farmers were to send it, and with the opening of the century the old rage for road-making, river improvements, and canals revived. The States were still utterly unable to meet the demand, and one by one were forced to follow the policy begun by Pennsylvania in 1791 and spend their money on roads and bridges in the sparsely settled counties, and, by liberal charters and grants of tolls, encourage the people of the populous counties to make such improvements for themselves. The wisdom of this policy was apparent. The success of the Lancaster Pike encouraged it, and, before the first decade of the nineteenth century closed, most of the landed and well-settled States were voting money, setting apart the proceeds of land sales, or establishing lotteries to open roads on the frontiers, while their citizens were forming stock companies to do the same thing between the old towns and the seaboard. The prospect of increasing the value of the back lands by establishing good roads, the hope of great dividends to be derived from the tolls, the fascination of speculating in stock, induced scores of communities to risk their capital in turnpike ventures. Once aroused, the rage for turnpiking spread rapidly over the whole country. In a few years a sum

almost equal to the domestic debt at the close of the Revolution was voluntarily invested by the people in the stock of turnpike corporations. By 1810, twenty-six had been chartered in Vermont and more than twenty in New Hampshire, while in all New England the number was upward of one hundred and eighty. New York by 1811 had chartered one hundred and thirty-seven. Their combined capital was over seven millions and a half of dollars. Their total length was four thousand five hundred miles, of which fully one third was constructed. Albany resembled a great hub from which eight pikes went out north, east, south, and west. Five more joined the villages of Newburg, Kingston, and Catskill on the Hudson with points on the Delaware and the Susquehanna, and cut off some of the trade which would otherwise have gone to Baltimore and Philadelphia. New Jersey had chartered thirty roads. Pennsylvania had given letters-patent to thirty-three. Maryland, in the hope of turning aside to Baltimore some of the rich trade which came down from the Genesee country and passed through Carlisle to Philadelphia, had chartered three roads to extend from Baltimore to points on the Mason and Dixon line, and many more to points on the Potomac.

Yet even this did little to remedy the evil. The cost of transportation was enormous. To move a barrel of flour down the Susquehanna from the Genesee country to Columbia cost twenty-five cents. To send it thence by land to Philadelphia, a distance of seventy-four miles, cost one dollar. To float it down the Susquehanna from Columbia to Frenchtown, at the head of the Elk, then haul it over the peninsula to the Delaware, and so to Philadelphia, cost seventy-five cents more. Shippers of merchandise from the Chesapeake to Philadelphia paid for transportation across the peninsula from Frenchtown to Newcastle rates that now seem extortionate. That for wheat was six cents per bushel; that for flour was twenty-five cents per barrel; for tobacco, two dollars a hogshead; that for freight in general, two dollars a ton. What little freight went from New York to Lewiston, almost entirely a water route, paid forty dollars a ton, with tolls extra. To haul a ton from Philadelphia to Pittsburg, an all-land route, cost one hundred and twenty-five dollars. Had flour

been sent over this route at the same rate per mile that was paid in carrying it from Columbia, the charges on each barrel would have been five dollars. To move a bushel of salt three hundred miles over any road cost two dollars and a half. For wagoning one hundred-weight of sugar three hundred miles the tariff was five dollars. Taking the country through, it may be said that to transport goods, wares, or merchandise cost ten dollars per ton per hundred miles. Articles which could not stand these rates were shut from market, and among these were grain and flour, which could not bear transportation more than one hundred and fifty miles. The causes of these rates were the terrible state of the roads and the high rate of tolls. Four horses at least were necessary to drag a wagon loaded with two tons any distance. For such a wagon the toll in New England was, on the average, twelve and a half cents for each two miles. In New Jersey one cent per mile for each horse was exacted. In Pennsylvania the rate of toll depended on the width of the tire of the wheels and the number of the horses, and varied from one sixteenth of a dollar to two cents per horse for each ten miles. Maryland used the same rates. On the Manchester turnpike in Virginia the rate for a loaded wagon was twenty-five cents for twelve miles.

Long carriage at such tariffs, so far as many products were concerned, was simply prohibitory. Flour, grain, corn, produce in general, was therefore forced to find a market somewhere within a radius of one hundred and fifty miles. The consequence was that as the States bordering on Canada became populated they turned to Quebec and Montreal for a market, and hundreds of thousands of dollars' worth of lumber, grain, flour, and potash were every year shipped down the St. Lawrence instead of down the Hudson or the Susquehanna. The channels of trade opened by the smugglers in the embargo days had never been closed. They had indeed been most carefully improved, and by 1812 the trade of northern New Hampshire, Vermont, and New York was in the hands of England. One half of the fur trade of the Northwest, all the produce of Vermont as far south as Middlebury, and of every county of northern New York from Essex and Clinton on Lake Champlain to Niagara on the Niagara River, was gathered at Mont-

real. The gazettes of Albany contained many advertisements of the rates of transportation. A barrel of flour could be carried from Ogdensburg to Montreal for eighty-eight cents, from Salina one dollar, from Cayuga a dollar and a half, and the same from Buffalo. As English goods came into Canada duty free, the cheapness with which they could be obtained formed another incentive to continue this trade, and the two sections of New York, no longer connected commercially, seemed in a fair way to be some day disconnected politically.

What was true of New York was doubly and trebly true of the whole country. The time had come when the great geographical sections of this country must be united, if they were to be united at all, by something stronger than the Constitution. No one who studies the history of those interesting times can fail to be struck with the utter want of anything approaching to a national feeling. Slowly but surely the sections were developing local interest and drawing farther and farther apart. The economic question of the hour was plainly how to counteract this tendency by a system of interstate commerce which should unite them with a firm bond of self-interest. That Congress had power to regulate commerce between the States was not disputed; but how far it could go in regulating the highways of commerce was yet to be settled.

Since the beginning of government under the Constitution, demands for internal improvements at public expense had often been made on Congress There had been calls for more piers in the Delaware below Philadelphia; for piers in the Merrimac at Newburyport; for piers in Barnstable Bay; for the removal of sand-bars at the mouth of Christiana Creek; for the removal of shoals in Nantucket Harbor; for a bridge across the Potomac; for a canal in the city of Washington; for a canal around the falls of the Ohio; for a survey of the rivers of Louisiana; for help to finish the Alleghany Turnpike, the Highland Turnpike, the Chesapeake and Delaware Canal; and to publish a map of the coast of Georgia.

The petitioners in the matter of the survey of the Georgia coast were three men named Parker, Hopkins, and Meers. They had, so the memorial informed the House, made a careful survey of the coast and inland navigation of Georgia and

South Carolina. The cost had been greater than they could bear. Their funds were gone, and, lest the work should be lost, they asked for money to engrave a map. The committee having the memorial in charge at first reported in favor of a loan of money. But this was so seriously opposed that the report was disagreed to and a new one submitted. The whole coast, the committee now said, from Florida to Chesapeake Bay, had never been surveyed with the degree of accuracy its importance to commerce and navigation demanded. Georgia in particular was almost unknown. Her harbors were numerous. Great quantities of lumber, ship-timber, indigo, rice, cotton, and tobacco went out from her ports each year. Yet her inland navigation had never been explored, nor the shifting of her bars and channels observed with accuracy. North Carolina and South Carolina were perhaps better known to our own sailors; but they, too, had never been carefully mapped, and, as many a shipwreck proved, were dangerous and terrible to strangers. That accurate charts, with the soundings, the appearance of the land, the entrance to the harbors, the channels of inland navigation, all carefully marked on them, would be of great public utility was not to be disputed. That the preparation of them ought to be encouraged was certain; for how could the public wealth be better used than in promoting undertakings which tended to increase the sources whence that wealth flowed? The committee felt justified, therefore, in urging that the President should be authorized to secure from individuals complete and well-made charts of the coast from St. Mary's river to Chesapeake Bay; that the revenue cutters, when practicable, should be employed in making such surveys as could not be purchased from individuals, and that, when the survey of the coast of each State was finished, the charts should be published.*

All admitted that the plan was commendable; yet so little interest was taken that the business was not again considered till the next session, when two reports were made.† During

* Annals of Congress, 1794–'95. House of Representatives, February 27, 1795.

† Annals of Congress, 1795–'96. House of Representatives, December 29, 1795, and May 14, 1796.

the interval the plan had greatly developed. Parker, Hopkins, and Meers had begun by asking for three thousand dollars to engrave maps of the Georgia coast from St. Mary's river to Savannah. The Committee on Commerce and Manufactures now recommended that every bay, sound, harbor, and inlet of the whole Atlantic coast should be surveyed and mapped. If well-made charts of any part of the coast could be had from individuals, the President was to buy them. If not obtainable, the President was to employ surveyors to make them, and use the revenue cutters where necessary. The end of the session was so near when this report was read that consideration was put off till, as it was supposed, Congress should meet again. But Congress met and adjourned many times, and six years slipped by before the House once more took action on a coast survey. An act was then passed providing for the erection of a number of light-houses. Some of them were to be on Long Island Sound, and, that the sites for them might be the better determined, the Secretary of the Treasury was bidden to employ fit persons to survey the Sound.* The result was a fine chart, which ought to have encouraged Congress to go on with the work so well begun. This, indeed, it seems to have done; for, almost precisely four years later, the Secretary was instructed by two other acts to have careful surveys made of the shores of Orleans Territory from the mouth of the Mississippi to Vermilion Bay,† and of the coast of North Carolina from Cape Fear to Cape Hatteras.‡ In presenting the bill for the Carolina survey the committee expressed an earnest hope that Congress would not let the next session pass without ordering a complete survey of the coast from the St. Croix to the Mississippi, and along the Gulf to the westernmost confines of Louisiana.# The wish was fully realized. The next session did not close without just such a law as the committee wanted, and on February tenth, 1807, Jefferson signed the bill which founded the coast survey. Fifty thousand dollars were set apart for surveys and charts on which, the law especially provided, should be put down not

* Act of April 6, 1802. † Act of April 20, 1806. ‡ Act of April 10, 1806.

Report of the Committee on Commerce and Manufactures, February 27, 1806.

merely the shore line, but all the islands, shoals, roads, places of anchorage within twenty leagues of our coast, together with the courses and distances between the chief capes and headlands.

The time chosen for beginning this noble work was most opportune, for there was then in the presidential chair a man who truly appreciated the importance of the undertaking, and at the head of the Treasury department a man whose powers of organization and administration were not second to those of Hamilton. Acting together, these two men drew up a plan for the survey, and sent it for criticism to seven men whose opinions were worth considering. One was Robert Patterson, director of the Mint. Another was Andrew Ellicott, who, after serving on many surveys of great importance, then filled the post of Secretary of the Land Office of Pennsylvania. Ferdinand Rudolph Hassler, a mathematician of note, was the third. John Garnett, Isaac Briggs, Rev. James Madison, president of William and Mary College, and Joshua Moore, of the Treasury Department, made up the seven. As submitted to these men, the plan consisted of three parts: A number of headlands, of capes, of prominent light-houses, of remarkable features along the coast, and the entrance to the chief harbors were to be selected and their latitudes and longitudes determined astronomically. There was to be a trigonometrical survey to connect these points, and a hydrographical survey to determine the channels, bars, shoals, and depth of water off the coast and in the bays, sounds, and harbors. If this plan seemed practical, the men consulted were asked to name persons fitted to carry out the work.* The answers were so satisfactory that, by the fall of 1807, Patterson, Hassler, and Briggs were at work selecting the instruments to be used, and making ready the details of the survey. Instruments of the kind and degree of accuracy needed could not then be had in the United States. Hassler was therefore ordered to proceed to England and superintend their manufacture in London. But before he could start the embargo was laid, the restrictive system followed, and August, 1811, came ere he set sail. The war opened soon

* Albert Gallatin to Robert Patterson and others, March 25, 1807.

after, so that it was not till November, 1815, that he reached the United States and delivered a great collection of mathematical books and mathematical instruments to the director of the Mint at Philadelphia.

While thus assisting commerce by sea, Congress was not unmindful of the needs of commerce by land. To such a course, indeed, it was pledged by the solemn compact made with Ohio. When that State was about to enter the Union, her people agreed that public lands sold within her borders should not be taxed for five years after the day of sale. In return for this, Congress agreed to spend five per cent. of the net proceeds of such sales in road-making. Some of the roads were to be in the State, others were to join the Ohio river with navigable waters emptying into the Atlantic. As three per cent. was speedily appropriated for road-making within the State,* but two per cent. was left to be expended on highways without. Yet, small as the percentage was, it had, by December, 1805, produced twelve thousand six hundred dollars.† A Senate committee was then appointed to consider the best manner of using it, and reported in favor of a road from Cumberland, on the Maryland side of the Potomac, to a point near Wheeling, on the Virginia side of the Ohio. This route, the committee were careful to state, was chosen from among several because it seemed best suited to the present needs of the people of Ohio, and because, starting at Cumberland, on the eastern slopes of the mountains, it would not interfere with systems of internal improvements then being carried on by Pennsylvania and Maryland.‡ No fault was to be found with the location of the road, and, as the money was lying idle in the Treasury, a bill to regulate the laying out and making of a road from Cumberland to the State of Ohio readily passed both Houses and became law.# Thirty thousand dollars were appropriated for beginning the

* Act of March 3, 1803.

† The fund began to accumulate on July 1, 1803. Between that date and September 30, 1805, inclusive, the net proceeds of land sales in Ohio was $632,604.27, two per cent. of which was $12,652.

‡ Report of the committee communicated to the Senate, December 19, 1805.

March 29, 1806.

work. Three commissioners were appointed to select the route. Applications were at once made to the States of Maryland, Virginia, and Pennsylvania, for leave to build the road, and the summer and autumn of 1806 was spent by the commissioners in travelling over ground to determine the alignment. Starting at Cumberland just where Wills Creek joins the north branch of the Potomac, the commissioners decided that the route should be over Wills Mountain at Sandy Gap, and along the line, but rarely on the bed, of Braddock's old road to the Big Crossing of the Youghiogheny, over Laurel Hill, across the Great Meadows, past the site of Fort Necessity, and on to the Monongahela at Red-Stone-old-Fort, or, as it had long since been called, Brownsville, and thence, by as direct a course as the country would permit, to the Ohio, near Wheeling. It now became the duty of the President to approve or disapprove the work of the commissioners, but Jefferson would not act till the three States had consented that he should have a free choice of routes. Pennsylvania did not consent till the early spring of 1807. Summer came, therefore, before the commissioners were again in the field. Their instructions were to change the alignment, bring the road through Unionville, and cut it out, for half its width, from Cumberland to Brownsville. More money was appropriated in 1810, and still more in 1811. Nevertheless, the work dragged on so slowly that the first contracts for actually building the road-bed were not signed till May, 1811. Four men then contracted for ten miles, beginning at Cumberland, and bound themselves to have their work completed by August first, 1812.

Thus, when the war for commercial independence opened, Congress had yielded to the demands of the East and of the West, and had begun to make internal improvements at Government expense. Hassler at London seeking books and instruments with which to found the Coast Survey, the workmen in Maryland ploughing and grading, pounding and rolling the National Pike, excited no comment whatever. It is quite likely that not one third of the people of the United States were aware of what was going on. Yet the political, the economic consequences of the era of internal improve-

ments thus opened have outlasted every result of the war in which the people were about to engage.

What Congress was willing to do was, however, but a trifling part of what it was asked to do. Many of the applications were easily disposed of. An adverse report, a postponement till another session, was enough to end such demands as that for the improvement of the harbor of Nantucket or for a pier in Barnstable Bay. But occasionally an appeal for aid came in which could not be disposed of by the report of a committee or the vote of one House. Such was the memorial of the president and directors of the Chesapeake and Delaware Canal.

This was a company chartered by the States of Maryland, Delaware, and Pennsylvania to dig a canal across the neck of the peninsula which parts the waters of Delaware and Chesapeake Bays. The scheme seemed so likely to be profitable that no difficulty was found in getting subscribers, and four hundred thousand of the five hundred and twenty thousand dollars of capital stock were quickly taken. Engineers were then employed, the alignment determined, and work begun on a large feeder, when the stockholders took alarm. One hundred thousand dollars had been spent in buying water rights, making surveys, and digging a feeder, yet not a clod had been turned along the line of the main canal. Seeing one quarter of their subscriptions gone with nothing, in their opinion, to show for it, the stockholders refused to pay their assessments. Suits followed, and in December, 1805, the directors, in distress, appealed to Congress for help. In their memorial they excused the call on the ground that the work was of general, not merely local importance. It was the beginning of a great system of inland navigation binding together eleven States. One glance at the map was enough to show that if the Chesapeake and Delaware Canal was dug, another much-talked-of canal, the Delaware and Raritan, would surely be cut across New Jersey. A continuous inland waterway would then be opened from Hampton Roads to Narragansett Bay and the head-waters of the Hudson and the Mohawk. Nay, more. The Dismal Swamp Canal, then building, would extend the line to Albemarle Sound and the bays and inlets of South Carolina. Another canal from Buzzard's Bay

to Massachusetts Bay would open the route to Boston, while a few years would suffice to see the Hudson joined with Lake Champlain, and the Mohawk with Lake Ontario. The economic value of such a work was set forth by statistics. Each State, it was said, produced something which the others wanted. Coal abounded on the navigable waters of the James, and was wanted in every maritime city on the coast and in every inland city where mills and factories existed. Flour and wheat, corn and meal, were products of the Middle States, and were wanted southward and eastward. Tobacco grew in a few States and was consumed in all. The fish, the oils, the lumber produced in the East, were much in demand in the South. But the enormous cost of land transportation and the immense distance by water had seriously hindered this interchange. From the head of Chesapeake Bay to Philadelphia by sea was a journey of five hundred miles, and could not be performed under a week or ten days. The consequence was that coal from Liverpool sold for less at Philadelphia than coal from Richmond. A ton of merchandise was frequently brought from Europe for forty shillings sterling, or about nine dollars. But the same sum of money would not move the same ton thirty miles on land. Let the canals be opened and this hindrance would be removed. Twenty-one miles of Chesapeake and Delaware Canal would save five hundred miles around the peninsula. Twenty-seven miles of canal between Trenton and New Brunswick would save three hundred miles of sea travel to New York. Dangers of the sea and dangers of the road would not exist. Insurance rates would fall, freight rates would be reduced, and a flourishing interstate commerce arise.

In the Senate the memorial found many friends and was warmly supported. They could not, however, venture to give money. The Treasury was, indeed, full to overflowing. But the House was bent, not on spending, but on distributing the surplus, and had already appointed a committee to report upon a plan. There were, moreover, many who doubted the constitutionality of voting money to dig canals. But that any one should object to give away land for such a use did not seem likely. Great blocks of it had often been given for church purposes, for schools; to the refugees from Canada;

to the French at Gallipolis; to the Marquis Lafayette; to Lewis and Clarke; to the Revolutionary soldiers; nay, to Ebenezer and Isaac Zane for building a road in Ohio. Why not, then, for building a canal in Delaware? But the committee having the memorial in charge did not propose to give land. They proposed to buy the shares of the company which had not been taken at two hundred dollars each and pay for them in land. A bill for this purpose was brought in,* but went over till February, 1807, when consideration was again put off till the next session.†

While the bill was still under debate John Quincy Adams moved ‡ that the Secretary of the Treasury be directed to report a plan for a general system of internal improvements. He was to consider the opening of roads, the removal of obstructions from rivers, and the building of canals. He was to make a statement of the number and character of works of public utility then existing in the country, and was to name such as, in his opinion, were worthy of Government aid. The motion did not pass. Nevertheless, within ten days a senator from Ohio secured the passage of a resolution precisely similar in character.#

With these instructions from the Senate before him, Gallatin set to work. A series of questions regarding the number, length, route, cost per mile of canals and roads, rate of toll, gross receipts, and substance of their charters, was drawn up and sent to the collectors of the ports, with orders to secure full answers. From the information thus obtained, Gallatin prepared that famous report on Roads, Canals, Harbors, and Rivers which is still ranked among the best of his official papers. By those who have never read that report, or, having read it, know nothing of the history of the times in which it was made, the work of the Secretary has been greatly overestimated. There was little in it that was new. A map, he said, would show that the United States possessed—were it not for four interrupting necks of land—a tide-water inland naviga-

* Journal of the United States Senate, January 28, March 21, April 12, 1806.

† Journal of the Senate, January 13, 15, February 5, 10, 24, 1807.

‡ Journal of the Senate, February 23, 1807.

March 2, 1807.

tion secure from the violence of storms and the attacks of enemies, and stretching from Boston to the southern confines of Georgia. These necks were the isthmus of Barnstable, New Jersey from the Raritan to the Delaware, the peninsula between the Delaware and the Chesapeake Bays, and the low marshy tract which separated Chesapeake Bay from Albemarle Sound. Were they all cut through by canals, the combined length of the four water-ways would not be one hundred miles, nor the cost much over three millions of dollars. The plan was old. The directors of the Chesapeake and Delaware had urged it on Congress in their memorial in 1805, Bayard had explained it in his speech in 1806, and canal companies had been chartered to carry it out.*

The second suggestion of the Secretary was that of a great turnpike along the Atlantic coast from Maine to Georgia. This, too, was old, and had but a year before been presented to the Senate in a resolution. Having thus disposed of the subject of communication north and south, Gallatin took up that of communication east and west and southwest. Four great rivers flowing into the Atlantic should, he thought, be improved to the head of possible navigation and then joined by four great roads over the mountains with four other rivers of the Mississippi valley. The rivers selected were the Juniata and the Alleghany, the Potomac and the Monongahela, the James and Kanawha, and the Santee or Savannah and the Tennessee. There should also be a canal around the falls of the Ohio, and good roads from Pittsburg to Detroit, to St. Louis, and New Orleans. Northward and northwestward the Hudson should be joined with Lake Champlain, and the Mohawk with Lake Ontario. A canal should be dug around Niagara that sloops might pass from Ontario to Lake Michigan. The cost of this splendid system of inland water-ways would be twenty millions of dollars. The sum was indeed a vast one; yet the United States could well afford to spend it. Her Treasury was full. Her surplus was yearly five millions

* Dismal Swamp Canal, 1787 and 1790. Chesapeake and Delaware Canal, 1797, 1801, 1802. Delaware and Raritan Canal, 1796. The route from Boston Harbor to Long Island Sound was surveyed by order of the General Court of Massachusetts, March, 1806.

of dollars. She might therefore, without embarrassment, draw two millions a year for ten years from the public Treasury; or, better still, set apart the proceeds of the sales of public lands.

The report was read on the sixth of April, 1808. A time less propitious could not have been chosen. The embargo had been on three months. The first and second supplementary acts had been passed. Trade and commerce were at an end; the whole frontier was in commotion; Jefferson was on the point of declaring the people of the region around Champlain to be in a state of insurrection; while the surplus of which the Secretary spoke was fast melting away. Under these circumstances the Senate did no more than order that twelve hundred copies of the report should be printed, and that six should be given to each member of Congress.

From the information thus spread broadcast during the summer, a plentiful harvest of petitions was gathered in the autumn. Every corporation which, under the plan of Gallatin, seemed even remotely entitled to aid, now made ready to seek it. The Carondelet Canal, the Chesapeake and Delaware Canal, the Ohio Canal, the Susquehanna Bridge Company, the Susquehanna and Tioga Turnpike Company, the Philadelphia, Brandywine and New London Turnpike Company, sent in memorials. Toward them all the Senate was well disposed. But a different disposition ruled the House, and there not one of the Senate bills was passed.

Such action did not discourage petitions, and with the opening of the eleventh Congress a new crop came to the tables of the Vice-President and the Speaker. And now the House began to give signs of yielding. Among the men who at that session took seats for the first time in Congress was Peter Buell Porter. He was a native of New England and a graduate of Yale. He had studied law in Connecticut, had caught the rage for Western emigration, and was then engaged in the business of transportation on the Niagara frontier. He represented the western district of New York, was perfectly familiar with the peculiar needs of the people, and had studied their political and economic condition as only a man of education could. The friends to internal improvements in the Senate consulted him

freely, and it is not unlikely persuaded him to become the champion of the movement in the House. However this may be, he undertook the task, and a bill for the internal improvement of the country by-roads and canals, a bill in the making of which he had a hand, having come down from the Senate, he seized the opportunity and presented the whole subject in a fine speech. The people of the United States, he began by saying, were parted by a geographical line into two great and distinct sections: the people who dwelt on the Atlantic slope of the Alleghanies and were made up of merchants, manufacturers, and agriculturists, and the people who dwelt on the western slopes and were exclusively farmers. It was the fashion to assert that this mountain barrier, this diversity of occupation, and the differences of character to which they gave rise, would lead to a separation of the States at no very distant day. In his humble opinion, this very diversity, if used skilfully, would become the means of producing a closer and more intimate union of the States than ever. At that very moment the people of the West were suffering, and suffering badly, for the want of a market. There was no vent for their surplus produce at home. All were farmers and produced the same articles with the same ease. Now, this want of a market had already done harm not only to the industry, but also to the morals of the people. Such was the fertility of their farms that half their time spent in labor was sufficient to produce enough to satisfy their wants. To produce more there was no incentive, for they knew not what to do with it. The other half of their time was therefore spent in idleness and dissipation. No question, surely, of greater importance could possibly come before the House than the question: How can this evil be removed? How can a market, and an incentive to labor, be provided for the people of the West? His answer was, by a canal from the Mohawk to Lake Ontario; a canal around the falls of Niagara; a canal from the Cuyahoga to the Muskingum; and another past the falls of the Ohio at Louisville.

The first result of such a system of inland navigation would be a fall in the cost of transportation. This would enable farmers to send to market grain and flour now shut out by the expense of land-carriage. Wheat was one of the staples of

the lake country, and was grown there with greater certainty and in greater perfection than in any other part of the United States. Yet wheat was selling on the lakes for fifty cents per bushel. This depression was due solely to the fact that it cost one dollar a bushel to send it to New York. Let a canal be cut from Lake Ontario to the Mohawk, and the cost of moving would fall to twenty-five cents a bushel, while the price on the lakes would rise to one dollar. But it cost the farmer from thirty to forty cents to grow a bushel of wheat. When he sold it for fifty cents his profit was, therefore, but ten cents. When he sold it for a dollar, his profit would be sixty cents, an increase of six hundred per cent.

Then would the farmer be able to pay for his land. The people who had settled on the public domain were indebted to the Government to the amount of several millions of dollars. Without a market they could never free themselves from debt. Without internal improvements they could never reach a market, and without the help of Congress there could never be internal improvements. Neglect this opportunity to secure the affections of the Western people, refuse to extend to them the benefits their situation so strongly demanded, and they would, some day, accost the Government in language higher than the Constitution. Let them see millions expended for the encouragement of commerce, while constitutional doubts were expressed concerning the right to expend one cent for the advancement of agriculture; let them see banks established for the accommodation of the merchant, but no canals dug for the accommodation of the farmer, and they would very soon take possession of their country and with physical force defy all the tax-gatherers that could be sent against them. If they were to be attached to the Union they must be attached through their interests. If the Government shunned all communication with them save that which sprung from the relation of debtor and creditor, let no man doubt that this relationship would very speedily be ended. When Porter had finished his speech he moved for a committee to consider the fitness of appropriating land, or the proceeds thereof, to building roads and canals of national importance. The House, without a

division, agreed, and appointed a committee of twenty.* From them came a bill essentially the same as one which, not many weeks before, had been reported in the Senate. In substance, this bill provided that the Government should take one half of the capital stock of any corporation which had been, or which might be, chartered to dig any of the canals or build any of the roads suggested by Gallatin. Having done this much, Congress would do no more, and the session passed without action. Nor was the following session more fruitful of results. The Senate made a land grant to the Chesapeake and Delaware Canal, refused a grant to the Havre de Grace bridge, and ordered a subscription to the stock of the Ohio Canal. But again the House would do nothing, and the eleventh Congress was in turn beset with petitions, old and new.

Twenty years before, in the early days of the rage for canals, Pennsylvania had chartered two companies. One was to join the waters of the Schuylkill and Delaware. The other was to construct a canal from the Schuylkill to the Susquehanna. Each had raised money; each had made surveys; each had bought land, dug some miles of trench, become embarrassed, and fallen into decay. From this condition the directors and stockowners were suddenly roused by the report of Gallatin in 1807.† Regarding this report as a pledge of Federal aid,‡ the Legislature of Pennsylvania united the two companies in one, called the new corporation the Union Canal Company of Pennsylvania, and gave it power to extend its route from the Susquehanna to Lake Erie. As soon as the new charter was secured, the affairs of the old companies were put in order, and Congress asked to help on the enterprise. But, of all beggars, the sturdiest, the most unblushing was the State of New York. There, too, after years of effort on the part of individuals, the State was roused to activity by the report of Gallatin. Encouraged by the near prospect of Federal aid, the Legislature instructed a commission to explore a route for

* Annals of Congress, 1809–'10, February 9, 1810, p. 1401.

† Memorial of the President and Managers of the Union Canal Company. Annals of Congress, 1811, 1812, pp. 2159–2161.

‡ Ibid.

inland navigation from the Hudson to Lakes Erie and Ontario.* The commission reported † and the Legislature promptly passed an act to provide for the improvement of the internal navigation of the State. ‡ In it nine well-known men were named canal commissioners.# Among the many duties assigned them was that of applying to Congress and the Legislatures of the neighboring States for aid and co-operation in the undertaking. The answers were not encouraging. Tennessee instructed her senators and requested her representatives to vote for congressional aid. New Jersey was deeply interested in the canal, but could not help it herself, and saw no reason for asking the Federal Government to do so. Connecticut thought it inexpedient to act on the request. Vermont put off consideration. Massachusetts and Ohio followed the example of Tennessee. The acting Governor and the judges of Michigan Territory did not approve of the route. The special committee sent to Washington to lay the application before Congress reported failure. Madison they found troubled with constitutional scruples. Gallatin thought land might be given, but not money. Some congressmen thought the scheme too vast; some were jealous of New York; some were eager for a constitutional amendment giving Congress power to charter banks and build canals without consulting the States. In the end New York received nothing. The Senate did not act. The House, taking up the memorials of the Chesapeake and Delaware Canal, of the Union Canal, of the commissioners from New York, declared that the state of the country was not such as to justify grants of land or gifts of money for the purpose of building canals. Though incensed by the refusal of land, the commissioners were not disheartened, and recommended the Legislature to borrow money abroad and begin the work without delay. ‖

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* Appointed by joint resolutions, March 13–15, 1810.

† Report of the Commissioners, etc., Albany, 1811.

‡ Act of April 8, 1811.

Gouverneur Morris, Stephen Van Rensselaer, De Witt Clinton, Simeon De Witt, William North, Thomas Eddy, Peter B. Porter, Robert R. Livingston, Robert Fulton.

‖ Report of the commissioners appointed by an act of the Legislature of the State of New York, etc., passed April 8, 1811, etc. Albany, 1812.

The advice was sound. Rude as were the means of transportation, costly as was the movement of freight, the valley of the Mohawk was even then a highway of trade and commerce. From Albany the way was fifteen miles over a good turnpike to Schenectady, where water navigation up the Mohawk began. Three kinds of craft were in use. But the favorite was the Schenectady boat, a broad and shallow scow some fifty feet in length, steered by a sweep oar of forty feet, and pushed up stream by man-power. When the river was full, ten tons could be carried. When the water was low, three tons made the load. At places where the stream in the dry season was likely to be but a few inches deep, or where a ledge of rocks barred the way, low stone walls were built out from each bank till they almost met in the channel. All the water coming down the river would thus be held back by a rude dam, the depth of the stream would be increased, and the boat easily pushed over the ledge.

West of Schenectady the first serious hindrance was met at Little Falls, where the Mohawk plunged down a high ledge. To pass this, a canal and eight locks were necessary. Once through the canal, the boats went on to Utica, a thriving town of two hundred houses, where the freight was sorted. Goods for the salt works were carried from Utica to Rome, from Rome by canal to Wood Creek, floated down the creek to Oneida Lake, through the lake and Onondaga river to Seneca river, up the Seneca to a swampy creek which led to Salt Lake, on the high banks of which stood the town of Salina. The place then contained some fifty houses and was wholly given over to the manufacture of salt. Three hundred kettles were boiling night and day, and one hundred bushels of salt were produced each hour. Some of this output found a market to the eastward. But most of it was floated down the lake and outlet to the Seneca river, and so to Oswego on the shores of Lake Ontario, where schooners were always waiting to carry freight to Lewiston. Twenty-five years before, when New York yielded to Massachusetts the fee simple of all land west of the line through Seneca Lake, she reserved a strip one mile wide along Niagara river. Over this strip Porter, Barton and Company enjoyed the sole right to transport goods.

Taking the goods in charge at Lewiston, they would deliver them to another fleet of schooners at Black Rock. Thence the barrels and boxes went by water to Erie, by land over the portage to old Fort Le Bœuf, and once more by water to Pittsburg.

Of all the cities of the Ohio valley, this was the busiest. It was the centre of Western emigration; the centre of Western and Southwestern trade, the one place through which the middle stream of population never ceased to pass. To it came the great salt trade of central New York, amounting to one hundred thousand bushels annually. To it came the immense overland trade from Philadelphia, consisting of dry-goods, hollow ware, medicines—everything needed to fit out the emigrant or supply the settler in the far Southwest.

To the value of this fine trade, and the importance of encouraging it, Pennsylvania had long been strangely indifferent. But the apathy of her legislators was at last destroyed by the efforts of William J. Duane. He was a member of the Legislature of 1809 and 1810, and chairman of the Committee on Roads and Internal Navigation. In seeking for information on the business intrusted to his committee, he was amazed at the little heed given not only by the representatives, but by the people, to the development of the internal resources of the State. The whole community seemed to him to be quietly sitting still, while New York was rapidly securing the trade of the Great Lakes and the Ohio. In hope of arousing interest, he published in the Aurora a long series of letters addressed to his fellow-citizens. He complained that after twenty-seven years of peace there was scarcely a public improvement in the State due to the liberality of the Legislature. Why was there no system of education? Why were not the poor taught gratis, as the Constitution commanded they should be? Why were the rivers and streams obstructed? Why were millions of feet of timber burned and not brought to market? Why were two thirds of the land a wilderness, and Pennsylvania, with the largest white population of any State in the Union, surpassed by many of her sisters? Because the people were careless in the choice of their legislators. Representatives spoke as if they represented merely their own family, or, at most, the

county from which they came. Some boasted of being friends to a strict economy. Some were so ignorant as to think that State money invested in bank stocks would be more profitable than money invested in turnpikes and canals. He had himself seen application after application for aid rejected, though well deserving a better fate. Now it was a call for aid to improve the road from Pennsborough to Towanda Creek, a road by which salt could be most cheaply carried to the interior counties of the State. But not a cent was given. Again a paltry sum was asked to help in opening the great East and West road. This was one of the most important in the State. It ran through all the northern counties and opened up communication between Pennsylvania and the Great Lakes. To this, too, not a dollar was given. What wonder was it, then, that hundreds of farmers went West every spring and autumn? that produce could not be sent to market as cheaply as in neighboring States? that lands did not bring as high a price or sell as readily as in Ohio or New York? What wonder was it that Philadelphia, once the foremost city in the land, had been outstripped by New York and was already hard pressed by Baltimore? Duane then told his fellow-citizens what they should do. He urged them to open water communication between the Delaware and the Susquehanna; extend it by the west branch of the Susquehanna to Lake Erie, and by the north branch secure the trade of the rich and fertile region of western New York.* His friends declared that the appeal was not made in vain, and that to it was largely due the appropriation of eight hundred and twenty-five thousand dollars which the next Legislature made for opening roads and building bridges.† Two hundred thousand was for a pike from the town of Northumberland to Waterford in the centre of Erie County. Two hundred and fifty thousand was to erect four great bridges over the Susquehanna at Harrisburg, at Columbia, at Northumberland, and at McCall's Ferry. Three hundred and fifty thousand was to be used in constructing a

* Letters addressed to the People of Pennsylvania respecting the Internal Improvement of the Commonwealth by Means of Roads and Canals. By William J. Duane, 1811.

† April, 1811.

turnpike between Harrisburg and Pittsburg. These roads and bridges once completed, Pennsylvania, it was believed, would drive every competitor from Pittsburg and control the Western trade.

That trade was well worth securing. For seven months of every year the streets of the town were crowded with emigrants arriving and departing, and its water front was fringed with boats of every description. Boat-building was the chief industry of the place, and, as no boat ever came back, the business never flagged. At either river bank could be procured at a moment's notice canoes cut from a single log, pirogues able to carry fifteen barrels of salt, skiffs of from five hundred to twenty thousand pounds burden, bateaux, arks, Kentucky broadhorns, New Orleans boats for use on the Mississippi river, and barges and keel boats with masts and sails. Provided, according to his needs, with one or more of such craft, and a copy of the Navigator, to warn him of the dangerous rocks and eddies that obstructed the way, the trader or the emigrant would push off into the stream and float slowly down with the current. The river banks, which fifteen years before were clothed with primeval forest, were now dotted with a succession of frontier towns. Below Pittsburg came Beaver, and Georgetown, and Steubenville, and Warren, and Wheeling, which was fast rivalling Pittsburg. Its population was increasing. Its business was large. Twice each week stages went out to and came in from Philadelphia. In the dry months of August and September, when the Ohio was low and no boats could come down from Pittsburg, all the trade and commerce of the city at the head of the river was diverted to Wheeling. Next after Wheeling was Pultney, and then Marietta, the model town on the Ohio. Then came Vienna and Bellepré, and the ruins of what had once been the home of Blennerhasset, Belleville, and Point Pleasant, where ten years later Ulysses Grant was born, Gallipolis and French Grants, Limestone, Manchester, Charlestown, Augusta, Columbia, and Cincinnati. Lawrenceville was the first town met with in Indiana Territory. Below it lay Westport and Louisville, and Jeffersonville, Clarksville, West Point, Henderson, and, at the mouth of the Cumberland, Smithtown. There numbers

of barges turned aside and went up the Cumberland to Nashville.

The vast stretch of thinly populated country in which Nashville was the foremost town was commercially a world by itself. All its supplies were drawn from Philadelphia and Baltimore. All its produce was sent to New Orleans. The exchange of the hats and boots, powder and lead, salt and cotton cloth, brought down from Pittsburg, for the cotton and hemp, pork and lard, bearskins, deerskins, and butter to go down the Mississippi, was almost universally by barter. At New Orleans the produce was indeed sold for specie; but little of the coin remained in Tennessee, for all was needed to buy new goods at Pittsburg. This way of trading began in the closing years of the century, after the Spanish treaty had secured for the Western country the right of deposit at New Orleans, and when specie was hardly to be met with. An advertisement of that time for wood-cutters at the Cumberland Furnace promises all who come half a dollar a cord, payable in salt, or castings, or bar iron, delivered at the landing six months later.* Another offers to purchase two hundred gallons of prime rye whiskey, half to be paid for in cash and half in good horses.† In another an offer is made to buy negroes, one hundred dollars of their value to be paid in dry salt. In a fourth a creditor informs his debtors that they may pay him in hemp, cotton, or dry hides.‡ In a fifth debtors are notified to settle in ginned cotton or pork.# In a sixth the creditor declares himself ready to take cotton, pork, or tow linen.‖ In a seventh a stage wagon with harness is offered in exchange for cotton, bacon, or hams.△ When James Lyon was driven from Washington by the Federalists, and attempted to establish his Cabinet and his National Magazine in the Western country, he assured the people of Tennessee that he would gladly receive the subscription price in cotton, hemp, or wheat delivered at Nashville.◊ Not long before this an enterprising trader announced in the columns of the Gazette that he was

* Tennessee Gazette, June 25, 1800.
† Ibid.
‡ Ibid., October 8, 1800.
# Ibid., December 3, 1800.
‖ Ibid.
△ Ibid., December 3, 1800.
◊ Ibid., June 10, 1801.

about to attempt a new venture. This was nothing less than opening a market for the products of the country and supplying the community with cash.* It must, said he, be obvious to every one that a circulating medium was badly needed, and that the exportation of produce was the only way by which the money so much wanted could be obtained. He proposed, therefore, to buy hemp, pork, flour, cotton, beeswax, and a score or so of beef cattle, sell them wherever he could, and bring back the cash, and he hoped that his fellow-citizens would encourage this first attempt to carry produce to a market. They seem to have done so, and a number of merchants were soon engaged in bringing in from New York, Philadelphia, and Baltimore what they announced as fine assortments of merchandise to be sold at Nashville for produce.† One trader goes so far as to remind the people that to him they owe "the pleasing prospect of an established cotton market"; declares that he was the first to bring about this trade, and insists that they should in return deal exclusively with him.‡

As years passed on, even this manner of trading proved disappointing. The mass of the community, it is true, was much the better for it. The creature comforts of the people were increased. It put better clothes on their backs, better shoes on their feet, better furniture in their houses. But it brought no more specie to their pockets, and by 1810 the newspapers are again full of complaints and remedies. Some attributed the scarcity of cash to the refusal of the State, the banks, and the business men to receive the old cut money which for years past had been taken by everybody. Some thought the falling off in emigration was the true cause. Others laid it to the custom of buying at Philadelphia and not at New Orleans. This produced four evils. As the merchandise was bought at Philadelphia, and the cotton and hemp for which it was exchanged at Nashville were sold at Natchez or New Orleans, the money did not remain in Tennessee, but went on to Philadelphia. This barter kept down the price of produce, because more was grown than could be

* Tennessee Gazette, October 8, 1800.

† Ibid., April 1, 1801, and September 16, 1801.

‡ Ibid., September 16, 1801.

exchanged. The price being low, industry was suppressed; men did not raise as much as they could, but as much as they needed for barter. This made it necessary for the farmer who wanted specie to export his own produce. A few of the well-to-do, by associating in companies of ten or a dozen, had been able to load a flat-boat and send one of their number along as supercargo to Natchez. But the small planters could not be exporters. One hundred of them would hardly raise enough to fill a boat. If they acted individually and intrusted their produce to commission merchants, all manner of risks were run. The boat might sink on the way. The book-keepers might swindle them. The merchant might cheat them. Even if all went well, five per cent. would have to be paid to the person who brought back the money.

Some humble economist, reflecting on the evils of this system, proposed that the State should interfere. His plan was for the Legislature to name two places of deposit, as Nashville and New Orleans, and for the people to elect two agents to manage them. Any man who had a barrel of pickled pork, or a hogshead of tobacco, or a bale of cotton, which he wished to dispose of, should be at liberty to carry it to Nashville, deposit it with the agent, and obtain a receipt. When a boat-load had thus been collected, the goods should be sent in State boats to the agent at New Orleans, sold and accounted for. A small charge for such service would bring a large revenue to the State, and would be gladly paid by the people.*

While demands were thus being made in every section of the country for better means of communication, shorter channels of inland trade, less costly ways of transportation, an agent, destined in time to revolutionize trade, commerce, and navigation all over the earth, was slowly creeping into notice. After twenty years of cold indifference the people had at last found use for the steamboat. That it was possible to move boats by steam had been shown over and over again both at home and abroad. Hardly a section of country could be named in the United States where somebody had not, at some time,

* A Commercial System submitted to the People of Tennessee. The system is elaborately explained in fourteen essays in the Democratic Clarion, May to October, 1810.

made use of some form of steamboat. James Rumsey had done so at Shepherdstown on the Potomac. John Fitch had repeatedly done so on the Delaware, and William Longstreet on the Savannah. Elijah Ormsbee had shown one to the people of Pawtucket and Providence. Samuel Morey had travelled in another from New Haven to New York. Fitch had used others on the Collect Pond in New York city, and at Bardstown on the Ohio. Oliver Evans had exhibited his Oruktor Amphibolos to the citizens of Philadelphia. John Stevens had propelled his boat across the Hudson. A little money, a little encouragement, a little patient endurance of failure, would have made more than one of these ventures a success. But the story of the steamboat is the story of every invention, of every great undertaking the world has yet seen; the story of steady growth, of gradual development. It is not within the power of any man to perfect anything. The astonishing progress which separates the clumsy craft of Rumsey from the Clermont, and the yet more marvellous progress which parts the Clermont from the Teutonic, are the results of the combined efforts of generations of men. Rumsey struggling with the sluggish current of the Potomac; Fitch striving to establish a steamboat line on the Delaware; Ormsbee borrowing a boat from one man and a copper still from another with which to make his experiments; Morey tossing on the waters of Long Island Sound; Evans driving his Oruktor around the Centre Square at Philadelphia—these are the men who made straight the way for Fulton and Stevens. Every man who since that day has produced a better tool, a safer boiler, a more economical form of grate; who has improved the steam engine; who has found a better way of making steel or welding iron; who has invented a labor-saving machine; who has in any way widened the domain of human knowledge, has done his part in the evolution of the "ocean greyhound" which in our day traverses three thousand miles of water in less time than, seventy-five years ago, Fulton spent in traversing three hundred miles of land.

Robert Fulton was the son of an Irish emigrant, and was born in Pennsylvania in 1765. He grew up in the town of Lancaster, and, his biographer declares, showed at an early

age a marked taste for drawing, painting, and inventing. So strong were these propensities that at twenty he went to Philadelphia and supported himself for some years painting miniatures and making such drawings as the mechanics from time to time required. After a long struggle between what seems to have been a desire to be a great artist and a desire to be a great inventor, his artistic tastes triumphed, and he went to London, where he fell under the influence of Benjamin West. From London he went to Paris, and took up his abode in the family of Joel Barlow.

At Paris, Fulton's mechanical tastes soon got the mastery over his artistic tastes, and he began to turn his attention seriously to diving-boats, marine torpedoes, and steamboats. By 1800 his ideas concerning the steamboat had been so far developed that he asked Volney to lay before Napoleon a plan for moving vessels with steam. Volney sent the communication to the Minister of Marine, who sent it to the First Consul, who ordered the Minister to treat with Fulton. A proposition was thereupon made by the Minister of Marine to spend ten thousand francs on experiments to be conducted in the harbor of Brest. Napoleon agreeing to this, the plan of Fulton was referred to the Institute for examination, and was never heard of again for three years. It was at this point that Fulton fell in with Robert R. Livingston, who had just come out as United States Minister to France, and to whose friendship and to whose purse is to be ascribed no small measure of his success.

The interest of Livingston in steam navigation had early been awakened, and he had at his own cost built a boat and made experiments on the Hudson river. Confident of success, he obtained from the Legislature of New York a grant of the exclusive right to navigate the waters of New York State by steam. The condition of the grant was that he should, within one year, move a boat of twenty tons by steam at the rate of four miles an hour.* He failed to do so. But the work went on, and when in 1801 Jefferson sent him as Minister to France, he was still engaged in experimenting.

Though his labors were thus cut short in America, they

* Act of March 27, 1798.

were continued in France, where he seems for the first time to have met Fulton, and where the two formed the partnership which proved so fruitful of great results. Encouraged by what Fulton had done, and still believing that a steamboat could be successful, Livingston obtained another grant from the New York Legislature in 1803.* The monopoly which in 1798 had been given conditionally to Livingston, and not secured, was now extended to Fulton and Livingston if they should within two years, by means of steam, move a twenty-ton boat four miles an hour against the current of the Hudson. As no time was to be lost, preparations were made at once for experiments on the Seine. That intelligence of these preparations came to the ears of Napoleon, and recalled to mind his order of 1801, is quite likely, for he now commanded the Minister of Marine to send him the project submitted by Fulton in 1800. Having read it in his camp at Boulogne, he ordered that a commission should be chosen from the members of the Institute, and that they should examine the project immediately. His letter is dated July twenty-first, 1804. On August eighth the people of Paris witnessed the experiment.

The learned members of the Institute seem to have been but little impressed. To Fulton and Livingston the trial was most encouraging. They determined to persevere, and despatched an order to Watt and Boulton at Birmingham for an engine to be delivered in the United States. Livingston soon after returned to New York. Fulton went over to London, and two years were consumed in endeavoring to persuade the English Government to adopt his submarine torpedo. Even in 1806, when he came back to the United States,† it was the torpedo, not the steamboat, that occupied his thought. The moment, therefore, his foot touched land, he hastened to Washington, and passed the winter of 1807 explaining models and lecturing on the torpedo to the President and the Secretary of the Navy.

The steamboat, however, was not forgotten. When Fulton reached New York in December, 1806, he found the engine built for him in England lying on a wharf near the

* April 5, 1803. † December 13, 1806.

Battery. There it had been for many months; no freight had been paid, and the agent of the ship that brought the engine over was holding it till the bill was settled. The time granted by the Legislature in 1803 within which a boat was to be moved by steam had expired in 1805. But the arrival of the engine, the arrival of Fulton, and the appearance on the waters of the Hudson a few months before of the steamboat Phœnix, renewed the interest of Livingston in steam navigation. The freight on the engine was paid, the act of 1803 was revived * for two years, and, while Fulton was busy with his torpedoes, a boat named the Clermont was built and launched on the East river. She was one hundred and thirty feet long, eighteen feet wide, was provided with a mast and sail, and was decked over for a short distance at stem and stern. In the undecked part were placed the boiler and the engine, carefully set in masonry. On either side was a wheel fifteen feet in diameter, with buckets four feet wide and dipping two feet into the water.

Thus equipped, the little craft moved from her wharf at one o'clock on the afternoon of August seventh, 1807, and began the longest and the most memorable voyage which up to that hour had been made by steam. Her wheels had no guards. Her rudder could not do the work expected. The weight of the engine, the boiler, the masonry, and the cold-water cistern sank the vessel deep in the water. Yet she traversed the one hundred and fifty miles between New York and Albany in thirty-two hours, and won for her owners the sole right to use steam on the lakes and rivers of New York State for twenty years to come.

After a few more trips had been made, the Clermont was withdrawn and during the winter was almost rebuilt. Her length was increased. Her hull was decked from stem to stern. Under it two cabins were built and provided with a double row of berths and with every convenience known to travellers on the best of packet boats. Her name was changed to the North River, and with the return of spring she began to run regularly up and down the Hudson. Success was now

* Act of April 6, 1807.

assured, the Legislature confirmed and extended the monopoly,* and from 1808 the steamboat came slowly but steadily into general use. The summer of 1809 saw one on Lake Champlain,† another on the Raritan, and a third on the Delaware. This was the Phœnix, built by John Cox Stevens at Hoboken, in 1806, and intended to ply as a passenger boat between New Brunswick and New York. But the monopoly held by Fulton and Livingston prevented the vessel entering the waters subject to the jurisdiction of New York State, and Stevens, sending her by sea to the Delaware, ran her between Philadelphia and Trenton.‡ A year later another made three trips a week between New Brunswick and New York. The route between the two chief cities of the country was thus partly by land and partly by water, and was strongly recommended to such as wished to avoid dust, mosquitoes, and a dangerous ferry. The traveller could leave Philadelphia at seven o'clock on any Monday, Wednesday, or Friday morning by the Phœnix, enjoy a cool and pleasant sail up the Delaware, breakfast and dine on board, and reach Bordentown at one. From Bordentown he went by stage to New Brunswick, where he must spend the night. At six the next morning the steamboat Raritan carried him to New York.#

The Raritan had begun her career in 1809 and had startled the travelling public by bursting her boiler one day at Amboy. The engineer had carelessly forgotten to take the weights off the safety valve. As nobody was hurt but a drunken boat hand who fell into a pool of scalding water, the company explained in a long card that boiler explosions were the result solely of gross carelessness; that they were inconvenient, but could never do any harm.‖ Repairs were made as quickly as possible and the trips continued till the ice made them dangerous. In 1810 the Raritan and the Phœnix ran

* Act of April 11, 1808.

† From Skeenesboro to St. John. Montreal Gazette, July 3, 1809. Baltimore Evening Post, August 3, 1809. True American, July 25, 1809.

‡ United States Gazette, July 6, 1809.

Aurora, October 19, 1810.

‖ True American, July 18, 1809.

in connection with each other as parts of one route. It was then possible, at a cost of five dollars in money and twenty-six hours in time, to traverse thrice a week the ninety miles which separate Philadelphia from New York. This distance is now passed over sixty-six times a day by the passenger trains of the Pennsylvania Railroad in less than one hundred and fifty minutes. The comfort of the boats more than made up for loss of time and drew away so many passengers that the stage line was forced to renewed exertions. A fourth coachee was therefore put on which left Philadelphia at eight every morning and brought up at Paulus Hook the same evening. Seven was the greatest number of passengers carried, at a cost of eight dollars each.*

The profits of the Raritan trade, twelve shillings for each passenger, went to the Fulton and Livingston company. This, it may well be supposed, provoked the wrath of the people of New Jersey, and in the next Legislature the monopoly of Fulton was boldly attacked. The demand was made that if the citizens of New Jersey could not build a steamboat and send it across the Hudson to New York without leave of Fulton and Livingston, then no boat having the license of Fulton should enter the waters of New Jersey. To this extreme the Legislature was not willing to go. Yet it passed an act which greatly enraged the monopolists. New York in her law † provided that if anybody should navigate a steamboat within her jurisdiction without a license, the parties aggrieved might seize the boat, engine, tackle, and apparel. Citing this, New Jersey ordered that if anybody did seize such a boat belonging to a citizen of New Jersey, and lying on the waters between the two States, the owners might seize, in return, any boat belonging to any citizen of New York

* This line sent four coaches each way daily. The first was The Expedition, which made the run in about twelve hours. Fare, $8. The second was The Diligence, which was twenty-six hours on the way. Passengers lodged at Rahway. Fare, $5.50. The third was the Accommodation Stage, which left Philadelphia at ten in the forenoon, lodged the passengers at Brunswick, and reached Paulus Hook next day at noon. Fare, $4.50. The fourth was the Mail Stage, which left at one in the afternoon and, travelling all night, entered Paulus Hook at six the next morning. Fare, $8.50.

† Laws of New York, Act of April 11, 1808.

found in any waters of New Jersey.* The New York company then threatened to withdraw their boat, place it on the Sound, grant no licenses to run steamboats to New Jersey, stop the ferry at Paulus Hook, and ruin New Brunswick.† Happily, these threats were never carried out. The New York company had trouble enough without seeking more. A rival sprung up, and a boat called the Hope was soon running between New York and Albany without a license. Determined to make an example, Fulton and Livingston applied to Chancellor Lansing for an injunction. The application came on to be heard at the October term, 1811, of the Court of Chancery, and was denied. Livingston and Fulton then appealed to the Court of Errors, which reversed the decision below, held that the act was constitutional, and granted the injunction.‡

At Philadelphia, Stevens meanwhile was striving to persuade investors and speculators to subscribe to the stock of a steamboat line to Baltimore. He proposed to raise seventy-five thousand dollars and build three steamboats, of which the stockholders should own one half and he the other. One was to run on the Delaware between Philadelphia and Wilmington, and two on Chesapeake Bay between Baltimore and the head of the Elk.# Subscriptions, however, came in slowly, and while the project was still on paper the first steamboat west of the mountains went down from Pittsburg to New Orleans, and became a regular trader between Natchez and the Crescent city. The next year two steam ferry-boats were in use. One, owned by Livingston and Fulton, carried passengers be-

* Laws of New Jersey, Act of January 15, 1811.

† New York Mercantile Advertiser. True American, February 8, 1811.

‡ Livingston *vs.* Van Ingen, 9 Johns, 507.

The cost of operating the three boats Stevens estimated at $21,000. As proof that this charge could be met and dividends paid, he produced certain statistics, which are of interest. Each boat would make two hundred and eighty trips per year, and carry each trip twenty tons of freight, yielding $60, or $22,400 per year for all. This would pay running expenses. But there would be ten through passengers each way daily at $3.50, or for the year $21,000. There would, again, be ten passengers each way between Wilmington and Philadelphia at $1.25 each, or $7,000 for all. A total revenue of $28,000 would thus remain to be divided among stockholders.

tween Paulus Hook and New York. The other plied between Philadelphia and the public-houses where Camden now stands, and on moonlight nights made trips down the Delaware with pleasure-parties.

It is interesting to notice that while our ancestors were thus being taught the possibilities of steam navigation they were shown a practical illustration of the usefulness of railways. So far as is now known, the first of these roads ever used in the United States was built down the western slope of Beacon Hill in Boston. It was intended for the easy transportation of gravel from the top of the hill to Charles Street, then being filled up and graded. In length it was a quarter of a mile, and consisted of two tracks so arranged that as the full cars ran down one they pulled the empty cars up the other.* This gravity road was but temporary, and was soon removed. The credit of constructing the first permanent tramway in America may therefore be rightly given to Thomas Leiper. He was the owner of a fine quarry not far from Philadelphia, and was much concerned to find an easy mode of carrying stone to tide-water. That a railway would accomplish this end he seems to have had no doubt. To test the matter, and at the same time afford a public exhibition of the merits of tramways, he built a temporary track in the yard of the Bull's Head Tavern in Philadelphia.† The tramway was some sixty feet long, had a grade of one inch and a half to the yard, and up it, to the amazement of spectators, one horse used to draw a four-wheeled wagon loaded with a weight of ten thousand pounds. This was in the summer of 1809. Before autumn laborers were at work building a railway from the quarry to the nearest landing, a distance of three quarters of a mile.‡ In the spring of 1810 the road began to be used and continued in use during eighteen years.#

The praise to be awarded Thomas Leiper is that of making the first practical test of tramways in the United States.

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* Built by Stephen Whitney in 1807.

† Aurora, September 27, 1809.

‡ Ibid., September 28, 1809, and October 29, 1809.

A Short Account of the First Permanent Tramway in America, by R. P. Robins. Proceedings of the Engineers' Club of Philadelphia, vol. v, No. 5.

The idea was in no sense his. Indeed, it may be that his attention was first called to railways by the description of one which Latrobe sent to Gallatin, and which Gallatin transmitted to Congress in his famous report. But even Latrobe was not the first to suggest the idea, for it had long been in the mind of Oliver Evans. Of all our early inventors, Evans was the most ingenious, the most versatile, and the most harshly used. His life was one prolonged effort to show a doubting generation the many ways in which steam might be used as a motive power. He applied it to mills for sawing marble, for grinding plaster, for cutting lumber; he repeatedly offered to apply it to the movement of wagons on land and boats on water, and in his Oruktor Amphibolos gave a no mean demonstration of what he could do. He is beyond question the father of the steam flouring mill, and had more than once asserted that he could drive wagons by steam, on railways, at the rate of fifteen miles an hour. So also did John Stevens. But these were men far in advance of their time. That the mass of their countrymen should comprehend what they had just begun to perceive was not to be expected. Evans described the situation truly when he declared that it was too much to expect the monstrous leap from bad roads to railways for steam carriages to be taken at once. One step in a generation, he said, was enough. And if the present would adopt canals, the next might try railways with horse-power, and the third make use of railways with carriages moved by steam.

Such enterprises, to be successful, required skilled workmen and capital. The workmen were not in the country. The capital was just then being largely invested in manufacturing ventures. For this the long embargo and the restrictive measures that followed are responsible. It has often been said, and truly, that the protective system of the United States began on the fourth day of July, 1789, when Washington signed the first of our many tariff acts. The day was well chosen, for that act was a second declaration of independence. It was a formal statement that henceforth domestic manufactures were to be encouraged in the United States, that henceforth we were to be industrially independent, and that the

goods, wares, and merchandise of foreign nations should come into our ports on such terms as best suited our interests. Beyond this the act as a protective measure is of no importance. Manufactures as we know them had yet to be established.

The framing of the Constitution of the United States was the direct and immediate consequence of the ruin of every kind of trade, commerce, and industry that followed the close of the Revolution. Nothing did so much to break down the old confederation as its inability to regulate trade and encourage manufactures. It is not surprising, therefore, that the moment Congress met under the Constitution urgent calls were made for the immediate exercise of the ample powers that had been given it.

At the close of the war the petitioners said they had seen with deep regret manufactures decline and imports increase. They had seen the people turn away from the products of their own countrymen and waste their wealth in buying from foreigners articles which, with a very little encouragement, could be as well made at home. In the hope of checking this evil, calls for help had been made on the Legislatures of several States, and the calls had not been in vain. Laws had been passed; duties had been laid; everything had been done that could be done to stop the rage for foreign manufactures. The result, however, had clearly shown that nothing effectual could be accomplished till one strong and vigorous Government ruled the whole country. That government now existed. Sole power had been given it to regulate trade and lay duties on imports, and this power the petitioners begged it to use without delay. The state of the country was melancholy. Manufactures were expiring. Trade was languishing, lands and houses were falling in value, and the poor increasing in number for want of work to do. But the encouragement and protection of American manufactures by a wise imposition of duties would stop all this, dispel the gloom, and raise the flagging hopes of the petitioners. Congress heard the prayer, and before the session closed passed the first tariff for the protection and encouragement of manufactures. Thenceforth for many years to come the matter of protection never failed to be before the House in one form or another at every session. In

1793 Washington mentioned it in his speech to Congress. The safety and interests of a free people required, he said, that they should promote such manufactures as would make them independent of others for necessary and, above all, for military supplies. The House sent his words to the Secretary of the Treasury with instructions to report on the means of promoting manufactures, and at the next session listened to Hamilton's famous report. Encouraged by this manifestation of the good-will of the House, men of every trade, of every occupation, the moment business grew dull, cried out for Government protection. Now it was the New England shipmasters at the port of Charleston demanding a higher tonnage duty on foreign ships.* Now it was the tan-bark gatherers of New York, New Jersey, and Pennsylvania asking for duty on leather that they might raise the price of bark.† Now it was the manufacturers of twine and cordage seeking for a drawback on their exported wares equal to duty on the imported hemp from which the wares exported were manufactured. Now it was the printers asking for the free importation of paper, which was refused.‡ Now the iron manufacturers asking for the free importation of bar iron, which was granted.#

To this time every petition save that of the printers had been reported favorably. But in 1794 the belief was general that the increase in the import duties, which had taken place since 1789, gave protection enough, and the prayers of the paint-makers in 1794; of the rope-makers in 1795; of a cotton-mill owner; a bolting-cloth weaver; a silk manufacturer; a glass-maker and a host of hat-makers; of the tallow chandlers; the rope-walkers and a calico-printer in 1797; of the coal-mine owners of Virginia, and the rum-distillers of Rhode Island in 1798—were all reported to the House unfavorably. These were applications for relief for particular industries or for individual men. At the close of John Adams's term, however, an effort was made for a general increase on duties for

* Senate, February 16, 1791.

† House of Representatives, February 23, 1792.

‡ February 15, 1793.

March 12, 1794.

the purpose of encouraging manufactures. But this also was reported unfavorably.

With the new administration came a new policy, and for a few years manufacturers had but to ask to receive protection. Much of this change of view was due to a change of condition. The war in Europe ceased; the protection afforded by the war ended; trade went back to its old channels, and immense quantities of foreign goods were poured in upon the country. In 1802 the people of Kentucky protested that the flour trade they had enjoyed during the war was ruined by the peace; that prices had fallen, that they could not compete with the East, and that they had in despair taken up the cultivation of hemp, and prayed for a protecting duty. The iron-masters of New Jersey declared that they were broken men unless the bar iron of Europe, so cheaply imported since the peace, was shut out by a high duty. In 1803 the members of fifteen different trades petitioned for protection, and the Committee on Commerce and Manufactures strongly urged the House to call on Gallatin to frame a system of duties that would encourage manufactures without increasing the revenue. The House so ordered, and early in 1804 Gallatin reported. But the importunity and number of the petitioners was so great that the Committee, without waiting for Gallatin, brought in a plan of their own. That same year the Mediterranean Fund was instituted, and all *ad valorem* duties were increased two and a half per cent. This the House seems to have thought was ample protection, and during four years no petitions were favorably considered. They were, moreover, few in number, for the renewal of war removed that distress which so many of the petitioners declared had been produced by peace. Foreign markets were again opened to American products. The carrying trade reached enormous proportions, foreign goods were cheap, and were again imported till the embargo shut them out entirely.

So far the tariff acts, save as precedents, amounted to nothing. The protection was very mild. The price of foreign goods was very low, and their importation was not checked by customs duties. The price brought by American produce in foreign markets was very high. In 1795 and 1796 flour

for exportation sold at the place of shipment for twelve dollars and forty cents per barrel. There was, therefore, more money to be made in raising wheat than in manufacturing cloths or twisting ropes. Capital, enterprise, everything which under other conditions might have been used to build up manufactures, was drawn aside to raise wheat and carry on commerce. An enormous carrying trade passed into our hands, and the exports of foreign produce increased in value from five hundred thousand dollars in 1791 to forty-six millions in 1801. The value of our gross exports in 1791 was nineteen millions. In 1801 it was ninety-four millions. We imported goods and wares worth twenty-nine millions in 1791, and merchandise worth one hundred and eleven millions ten years later. Nothing was made at home which could be brought from abroad; and the cheapness of foreign goods rendered it possible to bring from abroad almost anything that was wanted. The peace of Amiens threatened to destroy this great trade, and in two years it fell off one half. But on the renewal of war it went on more briskly than ever, and when the Berlin decree, the Milan decree, the long embargo, and the orders in council checked it in 1807, our exports of foreign produce were sixty millions, of domestic produce one hundred and eight millions, and our imports one hundred and thirty-eight millions.

A part of the people viewed this trade with delight. It enriched the merchant. It enriched the ship-builder. It gave the farmers near the seaboard a market for all they could produce. It filled the strong-boxes of the Treasury fuller and fuller every year, and enabled Gallatin to pay off twenty-four millions of the public debt. But it produced other results upon which another part of the people looked with horror. With foreign goods came in foreign tastes, foreign habits, foreign ideas. As our relations with England and France grew more and more complicated, and the day seemed near when these difficulties would have to be settled by war, patriots took alarm at our dependence on Europe. What, said they, will become of a people who can not cast a cannon, nor weave a blanket, nor so much as make a flannel shirt or a pair of woollen socks? During 1805 and 1807 the feeling that it was high time to set up home manufactures was especially strong

and wide-spread. The moment the embargo was laid, it broke forth all over the country.

At Baltimore, on the last day of December, 1807, a citizen issued a call for a meeting of merchants at the Coffee-House. Many came, and, after considering a plan to form a company for spinning cotton and wool, and making machinery for others to use, referred the matter to a committee. The address of the committee to the people of Maryland began by stating what were then considered by the opposers of manufactures as sound objections. Men, they would say, able to make labor-saving machinery can not be had in America. If factories were set up, where would you seek for superintendents to manage them? Capital, again, is hard to get; the price of unskilled labor is very high; raw material is scarce, and foreigners have full control of the woollen and cotton market. These objections the committee took up one by one and answered, and ended by strongly urging the formation of a company. The answer and appeal were so well received that the originators of the scheme were encouraged to go on, step by step, till in March, 1808, the subscription books of the Union Manufacturing Company of Maryland were opened in the Coffee-House at Baltimore. Ten thousand shares at fifty dollars each were offered and soon taken. A rage for manufacturing now swept the country. The Philadelphia Premium Society offered money prizes for the best specimens of broadcloth, forest cloth, and fancy cloth for vests, raven duck, and thread in imitation of that made at Dundee. The people of Charleston organized the South Carolina Homespun Company, and sold a thousand shares in one day. The men of Richmond decided to set up a mill for spinning cotton, and wrote to Providence for information as to how they should proceed. When the books of the Petersburg Manufacturing Society were opened, twenty-five thousand dollars were subscribed in a few hours. Many of the people of the town were already wearing homespun. To make the movement yet more popular, the Petersburg Troop of Cavalry decided to appear on July fourth clad in white Virginia cloth. The Culpepper Society for the Encouragement of Domestic Manufactures offered prizes for the best piece of home-made linen, for the best piece of cot-

ton cloth, and the best piece of woollen cloth. In Princess Anne County and in Brunswick County like societies were founded. The members of the Patriotic Society of Smith County, Tennessee, declared themselves opposed to the use of foreign-made goods; opposed to the citation of English common law and precedents in the courts; promised to labor for the abolition of these two evils, and offered ten dollars for the best set of buck-handled knives and forks of home manufacture.* At Philadelphia a number of manufacturers proposed to encourage the rising spirit by a semi-annual dinner to which any mechanic or artisan of good character could come. Religious persuasion, political faith, nationality, were all to be forgotten on the occasion, and nothing remembered but the progress of domestic arts and manufactures. The first dinner was in November, and to mark it as an event the company sat down in the room which had long been used by the United States Senate. Just as the year closed, a stock company was formed at Baltimore to build a warehouse for the reception and sale of home-made goods of every sort. Whoever could make straw bonnets, or knit worsted mittens and socks, or spin flax and wool, or weave linsey-woolsey, or produce anything marketable, could then send his wares to the rooms of the society, where sales would be made on commission. If necessary, a small advance would be allowed the maker. Every true and patriotic American, it was confidently believed, would come to the warerooms and buy.†

In the great cities the people formed associations which they called Societies for the Encouragement of Domestic Manufactures. Each man and woman who joined one of these was pledged to wear no garment of which the raw material was not grown and the fabric made within the boundaries of the United States. At Charleston the '76 Association, in order to rival the Society for the Encouragement of Domestic Industries, voted to pay fifteen per cent. more for American-made goods than was asked for the same fabrics when imported. At Baltimore the enthusiasm over manu-

* Carthage Gazette and Friend of the People, September 10, 1808.

† The Athenian Society.

factures rose so high that the fourth of July was set apart as the day for a great industrial parade. It should, the promoters declared, surpass even those fine industrial exhibitions which in New York and Philadelphia had followed the adoption of the Federal Constitution.

Tradesmen took up the prevailing craze and filled whole columns of the newspapers with advertisements of American patent shot, American oil-cloth equal to the best imported, American camphor better than the London refined, American flax sheeting, tow linen, yarn, and thread, American chintz calicoes, shawls, and pocket-handkerchiefs, domestic-made satinets, muslinets, and bed-ticking. The triumph of the Republican party was celebrated all over Pennsylvania with public dinners. On these occasions the revellers never failed to toast the infant manufactures. The sentiment of one was that they might increase as rapidly as the national debt of England. Another called on American women to put away the gaudy trappings of European luxury for the plainer costume of their country's manufactures. In a third the hope was expressed that the infant manufactures, like the infant Hercules, might strangle the serpent of British influence.

By this time the State Legislatures began to assemble, and the craze spread to them. The Pennsylvania House of Representatives passed a resolution declaring that it was the duty of every citizen to encourage the domestic manufactures of his country, and that, as example was more powerful than precept, the members of the House should come to the next session clothed in goods of American make. While the resolution was under debate an attempt was made to turn it into ridicule, and an amendment was offered defining the dress as hunting-shirt, buckskin pantaloons, and moccasins. But the House thought the matter serious and the amendment was rejected. In Kentucky, Henry Clay was the mover of a simi lar resolution, which Humphrey Marshall described as the trick of a demagogue. For this he was called out, and a duel fought in which both he and Clay were slightly wounded. The resolution meantime was passed. In Virginia the Legislature fixed the date on which its members should appear in clothes of home manufacture as the first day of December, 1809.

Ohio chose the first Monday in December; North Carolina urged her representatives to come to the next session wearing clothes made within her bounds, and, that the resolution might not be overlooked, she ordered it to be printed on the front cover of each copy of the session laws.* The Vermont Assembly asked the Governor and Council to concur in a resolution to appear at the next session wearing clothes of domestic manufacture. Connecticut turned her attention to sheep. As early as 1802 David Humphreys, then Minister from the United States to Portugal, sent to his home in Connecticut one hundred selected Merinos, and set up mills for turning their fleeces into cloth. The General Court of Connecticut now appointed a committee to examine the experiment of Humphreys and report what they saw. The report was so flattering that the Legislature thanked him for his patriotic efforts, exempted his mills from taxation for ten years, and his workmen and apprentices from poll taxes, road taxes, and service in the militia. New Hampshire promised to relieve from taxation any cotton and woollen manufacturing company whose capital was not less than four thousand nor more than twenty thousand dollars. Pennsylvania laid a tax on dogs and commanded the county commissioners to use the money for the purchase of Merino rams, keep them at places convenient to the people, and suffer any farmer to send four ewes. New York offered fifty dollars to the farmer who should be the first to bring a ram into his county.

Under such encouragement as this, Merinos began to come in rapidly. The invasion of Spain by Napoleon and the downfall of the Spanish monarchy had been followed by the confiscation of many of the famous flocks. Now for the first time it became possible to secure, for a reasonable sum, fine rams and ewes from the flocks of the royal monastery of Guadeloupe and from the yet more celebrated flocks of the Prince of Peace. For a while the chief occupation of the American Consul at Lisbon was buying and shipping sheep. From the day the embargo was lifted no ship came home from

* A copy of the session laws, bound in blue paper, with the resolution printed as directed, is in the Philadelphia Law Library.

Spain or Portugal without a few of them. Some brought little else. During 1810 the newspapers in all the seaport towns—Portland, Salem, Newburyport, Boston, New London, New York, Philadelphia, Norfolk—contained many advertisements of Spanish Merinos for sale. The sales were generally at auction, and the prices paid for rams were from three hundred and fifty to five hundred and ten dollars. Long dissertations on the care of Merinos and the value of their fleece were published in the newspapers and struggling magazines. Merino societies were formed, herd books were opened, and the Arlington sheep-shearing became an event in the industrial world.

Thus stimulated by every contrivance known to man, by the embargo, by the Non-importation Act, by the orders in council, by the French decrees, by bounties, by offers of exemption from taxation, by the solemn resolutions of legislators, and the solemn pledges of the people to use none but American-made goods and wares, manufactures began to thrive, and mills, factories, work-shops, foundries, rope-walks sprang up in every quarter of the land from Maine to Louisiana. From 1809 to 1812 the statute books of the States exhibit unmistakable signs of the progress of an industrial revolution. Charters for manufacturing companies began to vie in number with charters for banks, insurance companies, bridge companies, and turnpike companies. The water-power sites of Massachusetts, Rhode Island, and Connecticut then became the centre of the woollen and cotton industry. The Berkshire hills were covered with sheep. The one county of Pittsfield claimed fifteen hundred Merinos. All over New York, at Schaghticoke, at Galen, at Geneva, at Manlius, at Milton, at Montezuma, at New Hartford; in Rensselaer County, in Madison County, in the counties of Clinton, Oneida, Oriskany, Utica, Niagara, Columbia, Chenango, Orange, Westchester, iron-works, salt-works, glass-works, paper-mills, cotton-mills, thread-works, factories for making cotton and woollen cloth, axes, scythes, and edge tools were erected. As many as seventeen manufactories were incorporated by New York in 1810 and fifteen more in 1811. At Philadelphia were chemical works where vitriol was made, carpet

mills, oil-cloth factories, glass-works, paper-mills, type foundries, and two tall shot towers whose product, it was said, would save the country every year the twenty thousand dollars sent abroad to pay for bird-shot. The farmers of Ohio were raising wool. In Kentucky the planters were making a staple crop of hemp. At Lexington were nine rope-walks and four cotton-bagging mills, each using fifty tons of hemp and giving employment to four hundred hands. Kentucky made hats, boots, shoes. Windsor chairs found their way all over to Ohio, Tennessee, and upper Louisiana. The whole country furnished a market for her rope, twine, fish-line, seine-twine, cables, cotton-bagging, and sail-cloth.

The appearance of these infant industries was not immediately followed by demands for Government aid. The coppersmiths and the twine-makers seem to have been the only men who cried out for relief during the existence of the embargo. But when the embargo was lifted and the proclamation was issued announcing that, on the tenth day of June, 1809, trade would once more be renewed with Great Britain, many a manufacturer thought himself on the brink of ruin. The hemp-growers of Kentucky instantly petitioned for relief. Allured by the embargo and the Non-importation Act,* they had, their memorial set forth, gone extensively into the raising and manufacturing of hemp. They had looked on the Non-importation Act as a measure intended not so much to bring England to a sense of justice as to turn capital from commerce to manufactures. That she had been brought to do justice was as much a subject of rejoicing to them as to their fellow-countrymen. But with the renewal of trade coarse linen would come in, and on the reappearance of English linens their ruin would begin. Such was the power of English capital, such was the cheapness of English labor, such the encouragement given by bounties to English manufacturers, that competition was not to be thought of. If these feeble industries—industries called forth by the Non-importation Act—were to continue they must be protected. To do so was no

* American State Papers, Finance, vol. ii, pp. 367–368. Annals of Congress, 1809–1810, pp. 2170–2173.

more than good policy and common justice. Good policy, because it would increase national wealth, keep money at home, and add to the prosperity of the farmer, the planter, and the mechanic. Common justice, because when Kentucky beheld the fishermen of the East encouraged with bounties and protecting duties, when she saw the public money spent, not in the West, but at Washington and on the seaboard, in salaries, in buildings, in forts, on the army and the navy, from all of which she derived no benefit at all, she could not but feel that she was at least entitled to the protection of her staple industry.

The Committee on Manufactures were deaf to this entreaty. The members believed in protection. But no industry, in their opinion, deserved to be protected unless it could beyond doubt supply every demand of the home market. The people must not be oppressed by monopolies. That Kentucky could furnish all the cotton bagging and all the coarse linen that was needed by the people of seventeen states and six territories did not seem possible. In the report, therefore, which the committee made a few weeks after the Kentucky memorial was received no mention was made of coarse linen among the articles recommended to be protected.*

But how was the committee to determine what should be encouraged and what not? No statistics of any kind were to be had. What might be the true condition of the cotton and woollen industry, how many men and how much capital was controlled by the iron masters, to what extent the hat makers could supply the home market, nobody knew. To help the Committee on Manufactures in this respect the House called on Gallatin to report at the next session on the state of manufactures then existing in the United States.† He was to inform the House at the same time how such means as were within the constitutional powers of Congress could be used to foster and encourage manufactures. Gathering together such scraps of information as the collectors of the ports could give him, he submitted a report in April, 1810. That it was

* These articles were ready-made clothing and millinery, bed-ticking, corduroys and fustians, salt, shot, cotton manufactured beyond the Cape of Good Hope, and any article of which lead was the chief part.

† Journal House of Representatives, May 31, June 1 and 7, 1809.

hasty and defective he freely admitted, and he suggested that the coming census be made the occasion for collecting information both detailed and correct. Congress acted on the suggestion, and, by a special law, the marshals and their deputies were commanded to take an account of the manufacturing establishments in their districts, and report to the Secretary of the Treasury.*

All over the country, meanwhile, the friends of a protective policy were striving to rouse the people. It cannot be denied, they would argue, that many articles of clothing and nearly all necessary liquors can be made in the United States for less than it costs to import them. Wages are indeed very high. But the amazing improvements in all kinds of labor-saving machinery have already so reduced the price of labor that, when the cost of exporting our raw material is added to the cost of bringing back the manufactured goods, it is possible to undersell the importer of English and European fabrics. If this is to be continued, our factories must be permanently established, and to establish them permanently the fostering care of government is necessary; for Great Britain, in order to break and destroy our manufactures, will send over great quantities of her goods and sell them for less than it costs to make them.† Our manufacturers are in danger of being overwhelmed by the capitalists of Europe. Let us, then, call with one voice on Congress for protection. Let the mechanics and manufacturers in every town in the United States bestir themselves. Let committees of correspondence be appointed, and let memorials to Congress be drawn up and passed about for signature.‡ In Kentucky such memorials were passed about, and, by vote of the Legislature,# were transmitted to Congress.

Of all the petitions which up to this time had been laid before Congress, none stated the case of the protectionists so

* Act approved May 1, 1810. The vast mass of facts then gathered were given, in 1812, to Tench Cox to digest and classify. His report was made, in 1814, in American State Papers, Finance, vol. ii, pp. 666–812.

† Baltimore Evening Post, June 17, 1809.

‡ Kentucky Gazette. True American, October 11, 1810.

January 31, 1811.

clearly and so forcibly as one from the people of Lexington, Kentucky. "Since the opening of the French Revolution," they said, "two causes have produced a rapid accumulation of wealth in the United States. One is the unnatural demand for the products of our agriculture. The other is the unnatural expansion of our commerce. The ravages of war, by drawing away men from the pursuits of peace, produced the first cause. The ruin of the merchant marine of Europe produced the second. Upon their continuance it is not safe to depend. War cannot be eternal. Peace will return, and when it does what has so long been the soul of industry will expire, and a new means will have to be sought for preserving the wealth so rapidly acquired. Where, then, will a market for our produce be found? Asia and Africa want nothing from us. Europe will take but little. We must, in fine, look at home, and must get ready for that change in business which will surely take place when peace in Europe shall put an end to our carrying trade and destroy the foreign markets for our produce.

"Nor can the Government do better than encourage the growth of a home market. The decrees and orders in council produced the embargo. The embargo stopped commerce, on which many laborers depended for a living, many merchants for their profits, and many farmers for the sale of their crops. Untold losses and untold suffering were thus inflicted on thousands of men who, had our raw material been fabricated and our produce eaten at home instead of abroad, would not have lost one cent, nor been idle one day because of the decrees of Berlin and Milan, or the British orders in council. But, to secure a home market, manufactures must thrive, and to make them thriving, they must be protected. The manufacturer in the United States contends with obstacles long since removed in England. He is poor; he has shops and factories to build; he has workmen to train, high wages to pay, and none of the bounties which enable his English rival to overcome the cost of freight, duty, and insurance, and sell goods in the markets of America as cheaply as in those of England. Let it not be supposed, however, that the manufacturers are the only men concerned. The whole people are concerned. Should peace with England be broken, should we be

forced to take up arms in defence of our honor and our rights, where would we look for clothing and blankets for the troops and sailors, and cordage and sail-cloth for the frigates and privateers? Never shall we be truly a free people till we are as independent of England commercially as we are politically." Congress did nothing, and the war began with the worst predictions of the petitioners fulfilled.

It is impossible to read the many memorials which, for twenty years past, had thus been coming to Congress without noticing the general complaint of the high price of wages. To us, when we consider the long hours of labor and the cost of living, these wages seem extremely low.

An examination of such statistics of the pay of unskilled laborers in the chief towns as can now be gathered shows that the rates of wages were different in each of the three great belts along which population was streaming westward. The highest rates were paid in the New England belt, which stretched across the country from Massachusetts to Ohio. The lowest rates prevailed in the southern belt, which extended from the Carolinas to Louisiana. In each of these bands again wages were lowest on the Atlantic seaboard, and, increasing rapidly in a western direction, were greatest in the Mississippi valley. They varied again with the sex of the laborer, for men were paid most and women least. They rose and fell with the seasons of the year, for there was one rate for winter, when the days were short, and another for summer, when the days were long, and a third for harvest time, when work was plenty and the laborers few. And they varied with the conditions of labor, being greatest when the workman fed and lodged himself, and lowest when he was fed, lodged, and provided with grog by his employer.

Thus, in the district of Maine, at Haverhill, and about Boston, laborers when fed were paid seven dollars per month in winter and ten in summer. Passing westward, the scale rose, and at Springfield men were paid nine dollars; at Stonington, ten dollars; at Stockbridge, twelve; at Catskill, thirteen; at Hudson, fourteen per month; provided, in each case, they fed themselves. In the Genesee country and along the Lakes hiring by the month was not common, and there the

unskilled workman was paid one dollar a day for laboring from sunrise to sunset. Throughout central Pennsylvania eight dollars per month of twenty-six working days was paid to farm hands when fed and housed. Boatmen on the Ohio received one dollar per day. In the southern belt the negro was the chief laborer, and when he was hired out, as was the case in all the towns, his owner was paid eighty dollars per year. On the Mississippi the boat hands were fed and paid one dollar per working day. Even skilled services commanded little pay in the Southwest. Thus at Nashville, after a long and bitter quarrel which resembles a cut-rate war between two modern railroad corporations, the doctors met and adopted a schedule of prices which they published in the newspapers, and by which they promised to abide. Visits which did not take them more than three miles from home were to cost the patient one dollar. For each mile beyond this limit they were to receive a shilling more. The charge for powders was ninepence per dose; for anodynes, a shilling and sixpence; for a blistering plaster, three shillings; for an ounce of a tincture of bark, a shilling and sixpence; and for a bottle to put the tincture in, ninepence.

Between 1800 and 1810 the spread of population, the increase in the number of farms, the rush of men into the merchant marine, raised the pay of the unskilled laborer very perceptibly. From the estimates of the cost of internal improvements, from the pay-rolls of turnpike companies, from town records, from private diaries, from newspaper advertisements, it appears that during this period men who could drive piles, or build roads, or dig ditches, or pave streets, or tend a machine in any of the factories, or were engaged in transportation, were paid from a dollar to a dollar and a third per day. One advertisement for thirty men to work on the road from Genesee river to Buffalo offers twelve dollars a month, food, lodging, and whisky every day.

The wages of skilled workmen, however, underwent no such increase. A few classes of artisans greatly in demand, as ship-carpenters, were paid two dollars per day. But they were the exception, and such trades as had labor organizations now attempted to force up wages by strikes. Labor organizations

at that time were generally for benevolent purposes solely, and nothing is more characteristic of the opening years of our century than the rapidity with which benevolent societies of all sorts came into existence. New York was especially rich in them, and there, between 1800 and 1810, twenty-four were incorporated. They were founded for all manner of benevolent purposes, and were scattered all over the State, from New York city to Geneva. Such as were purely labor organizations were in general of two kinds—mechanical societies, made up of artisans following all sorts of trades, or, in the large cities, societies composed of men of one craft. Examples of the first kind were the Albany Mechanical Society,* the Catskill Mechanical Society,† and The General Society of Mechanics and Tradesmen of the County of Kings.‡ Examples of the latter class were the New York Masons' Society,# whose members were either plasterers, bricklayers, or stone-masons; the New York Society of Journeymen Shipwrights,‖ the Franklin Typographical Society, and the Journeymen Cordwainers of New York City. In Philadelphia were the Asylum Company of Journeymen Printers, the Typographical Society, the Society of Hatters, and Journeymen Cordwainers. In Baltimore there had long been a Society of Journeymen Tailors.

Associations of journeymen of one trade were almost invariably for the purpose of regulating wages. When, therefore, about 1805, the pay of the unskilled laborer began to rise and that of the skilled laborer did not, a series of strikes was inaugurated. The journeymen tailors of Baltimore had one as early as 1795, and forced up wages to seven shillings and sixpence per job, and another in October, 1805, when the pay per job was fixed at eight shillings and ninepence, and a system of "extras" introduced, by which what had once been four jobs was at last made to count as eight. Almost at the same time the journeymen cordwainers struck in Philadelphia. Their society had been in existence some thirteen years, had conducted many turn-outs, had always been successful, and had

* Incorporated March 6, 1801.
† Incorporated 1807.
‡ Incorporated 1805.
# Incorporated 1807.
‖ Incorporated April 3, 1807.

so improved the rate of wages that, by 1805, it was possible for an industrious journeyman to earn eleven dollars and a half each week. But the strike of that year was stoutly resisted, and the strikers brought to trial in the Mayor's Court, charged with conspiracy to raise their wages. Just at that moment the Aurora was engaged in an attack on the English common law, which a judge had declared to be in force in Pennsylvania, and, as the indictment had been obtained under the common law, Duane made the cause of the shoemakers his own. Among the blessings promised mankind by the Revolution was, he said, the emancipation of industry from the fetters forged by luxury, laziness, aristocracy, and fraud. Hitherto the people had travelled the level road to equal justice. No monopoly had been tolerated save patent rights. Of all the barbarous principles of feudalism entailed on us by England, none was left but slavery, and even this would be greatly restricted in 1808. Yet, would it be believed, at the very time when the state of the negro was about to be improved attempts were being made to reduce the whites to slavery. Was there anything in the Constitution of the United States or in the Constitution of Pennsylvania which gave one man a right to say to another what should be the price of his labor? There was not. It was by the English common law that such things became possible. When the trial was over and the men convicted, he published a report of the trial, and dedicated it to Thomas McKean, Governor, and the General Assembly of Pennsylvania.* The shoemakers, after their conviction, opened a boot and shoe warehouse of their own, and appealed to the public to save them and their families from "abject poverty." †

Two years later the journeymen tailors struck for a second time in Baltimore. Each side appealed to the impartial public. The journeymen demanded ten shillings the job, or nine dollars a week, which was no more, they declared, than was paid to the common laborer, who had not spent an hour learning his business, while they had spent seven years. The master tailors replied that the journeymen were becoming

* Aurora, May 29, 1806.

† Aurora, April 26, 1806.

high-handed. Not only had they refused to work at the old wages, but they had forced men who were willing to work to stop, and had threatened to tar and feather any lawyer who prosecuted them. Few masters in the city made a thousand suits a year, and none were paid more than seven dollars for making one. To yield to the demand of the journeymen was, therefore, impossible, unless gentlemen were willing to pay more for their clothes. The end was a compromise.

From Baltimore discontent spread to New York, and in October, 1809, the cordwainers of that city went out on strike. The society was well organized, had on its rolls about one hundred and eighty-six members, and seems to have been careful to enforce its rules, some of which were most tyrannical. Every journeyman coming to the city must join the society or a strike against the shop where he was employed would follow. When he did join the shop he ceased, so far as his trade was concerned, to be a freeman. He could not agree with his employer as to the wages for which he would work. He could not remain in a shop if the master cordwainer employed an apprentice who was not a member of the society, or employed more than two apprentices who were members of the society. If a member broke any of the rules a demand was made on his employer for his discharge, and, if not complied with, a strike was ordered against the shop. Strikes of this kind seem to have been common. One happened in 1809. But the firm sent their work to other shops, the journeymen found it out, and a general strike was ordered. The masters followed the example set in Philadelphia: the strikers were arrested and tried for conspiracy to raise their wages. The case came on in the Mayor's Court in 1809. De Witt Clinton was then Mayor; his term was nearly ended, and, not wishing to antagonize either party, he twice postponed decision. In April, 1810, Jacob Radcliff succeeded him, and, not having heard the argument made before Clinton, put off the case to a special session in July, 1810. The journeymen were then found guilty, admonished by the Mayor, and fined one dollar each with costs.

Out of the great cities such labor movements could not take place, for skilled workmen were not numerous. Even in

the cities, save in a few trades, the demand was greater than the supply. The contractors who built the City Hall at New York were forced to advertise for stone-cutters in the newspapers of Philadelphia, Baltimore, and Charleston, South Carolina. Every known inducement was offered. Wages would be high and paid weekly, tools would be kept in repair, work would continue summer and winter for several years, the situation was most healthful, and, though the yellow fever raged in other parts of the city, no workman need fear.* It is no uncommon thing to see, appearing for several weeks at a time, such advertisements as "Wanted, two or three journeymen coppersmiths; liberal wages will be paid";† "Wanted, six or eight carpenters; will be allowed for the use of tools"; "Wanted, four or five journeymen bricklayers,"‡ and in the small towns on the frontier persistent calls for journeymen tailors, shoemakers, blacksmiths, and coopers. In sparsely settled communities tailors and shoemakers, dentists and doctors were generally itinerant, and would travel on circuits and appear in certain towns, or at certain taverns and cross-road inns, at regular intervals. Throughout Pennsylvania no inconsiderable part of the skilled laborers was composed of redemptioners. Advertisements offering them for sale announce every kind of handicraftsman, from gardeners and weavers up to stay-makers and barber surgeons. South of Pennsylvania the laborer was a slave.

The economic growth of twenty years had wrought a great change in the sentiments of the people on the subject of slavery. The feeling stirred up by the revolution—the feeling that it was grossly inconsistent to declare that all men were by nature free and entitled to the inalienable rights of acquiring and enjoying property, while hundreds of thousands of men all over the country were, by law, held in slavery, dispossessed of property, and deprived of the power of acquiring any; the feeling which had founded abolition societies, which had forced Congress to shut slavery out of the Northwest Territory, and had led every State north of the Mason

* Aurora, June 24, 1805. Charleston Courier, July 13, 1803.

† Baltimore Federal Gazette, May 30–June 30, 1804.

‡ Democratic Clarion.

and Dixon line to provide in some way for the abolition of her slaves—this feeling had all but died out. Save the Society of Friends, the members of the struggling abolition societies, whose delegates met each year, and a few men of humanitarian sentiments, the cause of abolition had scarcely one advocate. For this the Constitution was largely responsible. The House of Representatives in 1793 had been called on to abolish slavery, had refused to do so, and had taken occasion to lay down distinctly what were its constitutional powers. The General Government, the House said, could not prevent the importation of slaves before 1808; nor emancipate such slaves as were in the country, nor interfere with the internal affairs of the States for the purpose of securing better treatment of the negroes. All Congress could do was, lay a tax of ten dollars on each slave imported, and forbid citizens of the United States, and subjects of other States, to fit out ships in the ports of the United States for the purpose of engaging in the African slave trade. From that moment the cause of abolition declined. The Northern States had extinguished or soon provided for the extinction of slavery; the Southern States would not do so; the House of Representatives had declared it could not do so; and to agitate the question any longer seemed, to the great body of the people, quite useless.

No sooner did Congress thus define its powers than it was called on to use them. In 1793 the South demanded and obtained the act for the rendition of fugitive slaves. In 1794 the North demanded and obtained the law for the suppression of the slave trade. Thenceforth no citizen of the United States and no foreigner was to be suffered to use our ports for building or equipping ships for the slave trade of foreign countries. As none of the Southern States permitted negroes to be imported from abroad, the people of the United States seemed to have done all that could be done to stop the African slave trade. But just at this time the effect of the cotton-gin began to be felt. An immense impetus was given to cotton-growing. The demand for slaves could not be supplied by their natural increase, and a horde of kidnappers and smugglers sprang up, who undertook to make good the deficiency. Negroes set free by the efforts of the Friends, and of the so-

ceities for the abolition of slavery, were seized, dragged South, and sold into slavery. Against this outrage the Friends protested, and the negroes petitioned Congress in vain. The remedy, the House declared, lay with the courts, not with Congress, and passed the matter by.

The slave trade meanwhile went on openly. Vessels, whose construction made clear the purpose for which they were intended, were built in our ports, loaded with manacles, and cleared for the West Indies, where, taking on a cargo of rum, they would raise the Danish flag and sail for Africa. So bold and defiant did the slavers become that in 1800 Congress was forced to amend the law against the slave trade and make it more stringent. Any citizen of the United States who had any part or parcel in a ship engaged in carrying slaves from one foreign port to another was liable to a fine of twice the value of his interest in the ship and twice the value of his interest in the slaves. Vessels bearing commissions from the United States were empowered to make a prize of any ship found violating the law.*

The restrictions were concessions to the feelings of the North, and were followed in time by a concession to the fears of the South. An agent of freedom far more terrible, in the opinion of the planters, than Quakers or Abolitionists, had suddenly appeared in the midst of them. A ship-load of free negroes from Guadeloupe had landed at Wilmington in North Carolina. Others from San Domingo had reached Boston and New York. In North Carolina these men were beheld with horror. They had once been slaves. They had been made free by the Government of France, had become obnoxious, and had by force been placed on board an American ship and carried to the United States. Their minds were believed to be inflamed with wild ideas of liberty by the doings of Toussaint L'Ouverture. All the horrors of San Domingo, the uprising, the massacre, seemed likely to be repeated on American soil. Against such dangers the House was entreated to protect the country,† and soon had under discussion a bill forbidding

* Act of May 10, 1800.

† Memorial from sundry inhabitants of Wilmington, January 17, 1803.

any negro, mulatto, or person of color to enter a port of any State from which he was by the law of that State excluded. It was represented in the course of debate that this was a discrimination against citizens of the United States. In the North some citizens were black and some were white. Such as were black could not, should the bill pass, go to sea for commercial purposes, nor cruise along the shore, nor even in distress put into a port without being seized and punished. This was a violation of the constitutional provision that "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." In precisely the same way the law would discriminate between the white citizens and the black citizens of a State. The one would be at liberty to roam at will, the other would not be safe across the border. The justice of these objections was plain. The bill was therefore recommitted, and when, some weeks after, it passed Congress, negroes, mulattoes, and persons of color who were citizens, natives, or registered seamen of the United States, or seamen of countries beyond the Cape of Good Hope, were expressly exempted. The law applied, in short, to the French West Indies and the coast of Africa, and commanded collectors and officers of the customs to be vigilant in carrying out the laws of the several States prohibiting the importation of negroes.*

Of all laws, these were the most difficult to execute. The extent and physical features of the Southern coast, the apathy of the people, and the profits of the trade, produced a race of smugglers who gave no heed to the collectors or the statutes.

Negroes direct from Africa—unable to utter a word of English—were to be seen everywhere. South Carolina found it impossible to enforce her law, and in 1803 repealed it. The purchase of Louisiana followed, and the two events produced, in 1804, such a revival of the antislavery feeling as the country had not witnessed for twenty years. North Carolina, horrified at the rush of slavers into the port of Charleston, cried out for an amendment to the Federal Constitution and sent to the State Legislatures a resolution proposing one giving Congress power

* Act approved February 28, 1803.

to prohibit the importation of slaves from Africa, from the West Indies, from any part of the world.* Massachusetts heartily approved,† bade her senators and representatives move such an amendment as North Carolina proposed, ‡ and sent to each State another designed to limit representation in future to freemen.# When the delegates to the American convention for promoting the abolition of slavery met at Philadelphia, they too expressed alarm at the consequences of the purchase of Louisiana, and petitioned Congress to exclude slavery from the territory west of the Mississippi, just as a previous Congress had shut it out from the territory northwest of the Ohio. The action of South Carolina had already called forth a motion in the House of Representatives to lay the constitutional tax of ten dollars on each slave brought into the United States or its territories. One of the representatives from South Carolina was Thomas Lowndes, who now undertook to defend her. She had, he said, in common with her sisters, prohibited the importation of negroes. But her river system afforded navigation to the very heart of the State. Brethren from the Eastern States were very eager to take advantage of this. The officers of the customs were not amenable to her, and the law was defied. The number of negroes introduced each year was as great as if the trade had been legal, and the State, to remove from before the eyes of the people a spectacle of a law openly defied, most wisely repealed it. Under such circumstances the tax would do no good. It would not prevent the importation of one slave. A revenue would flow into the Federal Treasury, and this revenue would be gathered exclusively in South Carolina. Was it just to lay such a tax on her agriculture? Were the tax needed to replenish a wasting Treasury, the need might be an excuse for imposing it. But money was not wanted. The annual revenue was quite enough and more than enough to meet the annual expenses. A tax on slaves brought from abroad must then be regarded as a cen-

* Passed the Senate of North Carolina, November 29, 1804, and the House, December 14, 1804.

† Approved by Massachusetts, February 12, 1805.

‡ Moved in House of Representatives, March 3, 1805.

History of the People of the United States vol. iii, pp. 44–47.

sure on South Carolina, as an attempt to coerce her. She was a sovereign State, and under the Constitution had a right to import all the negroes she wanted.

This was admitted, and it was said in reply that the United States had a constitutional right to tax slaves imported; that slaves were selling at four hundred dollars a head; and that a tax of ten dollars on articles worth four hundred was not very burdensome. The duty, moreover, was uniform. No State was exempt. If one paid nothing and another much, that was the affair of the State and not the fault of the tax. The question was simply one of expediency, and the expedience was shown by three considerations. In the first place, the tax could easily be borne; not one slave would be kept out of the country because of the duty. In the second place, bringing in slaves was harmful to the poor white laborers. It deprived them of work and increased the severity of their lot. In the third place, the money raised would be most acceptable, for it could be wisely used to make roads, to erect public buildings, to pay some of the many just claims on the Government which had been disallowed by the statute of limitations. To this it was answered that if the tax were laid the Government would be deriving revenue from the slave trade and would be in duty bound to protect and defend it, for taxation and protection went together. How would the opponents of the traffic in human beings like that? Their answer was to order a bill laying the tax to be reported. Another long debate followed, in the course of which it was urged that, if action were postponed, the Legislature of South Carolina, seeing how odious her law was in the eyes of the people, would repeal it. The argument prevailed, for the presidential campaign was at hand, and the bill was not acted on. A year later the matter was again before the House for a few moments; but another year passed before it was seriously considered. Then it seemed as if something would really be done. The resolution to tax was debated and agreed to. A bill was ordered, reported, read twice, committed, debated, read a third time, and sent to a select committee; but the new bill which was reported received no consideration. At the opening of the next session Jefferson made mention of the matter in his message.

He congratulated Congress that the day was near when it could by law stop the importation of slaves, and urged the passage of such a law without delay. In a few days bills for this purpose were before both House and Senate. The House bill prescribed heavy fines and forfeitures for any one who, after the thirty-first of December, 1807, brought a slave into the United States or its territories. As it then read, a negro imported in violation of the law would be forfeited and be treated in accordance with the provisions of an act to regulate the collection of duties. They were, in other words, to be seized by the revenue officers as goods, wares, and merchandise imported contrary to law. They were then to be libelled in the Federal courts, condemned, sold at the public auction block, and one half the money received was to be paid into the Federal Treasury. This would have made them slaves. An amendment was therefore offered providing for the freedom of such persons—and disagreed to. The whole authority of the Government, said one member, could not enforce such a law; the people would rise up against it. Did gentlemen suppose that the inhabitants of the slave States would suffer free negroes to live among them? No! They would, gentlemen would understand him, "get rid of them in some way." "We must," said he, "either get rid of them or they of us. There is no alternative, and I leave gentlemen to determine which course would be pursued. There can be no doubt on this head; I will speak out. It is not my practice to be mealy-mouthed on a subject of importance. Not one of them would be alive in a year." * The next proposition was to strike out the provision that the negroes should be forfeited. What should be done with them would then be left to be determined by the laws of the States. But this seemed as bad as the first, and the House, unable to determine what to do, sent the bill to a select committee. When it came back amended and debate was renewed, attempts were again made to provide for the freedom of the negroes; to provide for their freedom if brought into a free State and for their transportation back to Africa if brought into a slave State; to provide for their

* Speech of Peter Early, of Georgia. Annals of Congress, 1806–1807, p. 174.

transportation to a free State; and to provide that no person should be sold as a slave by virtue of the act. This was lost by the casting vote of the Speaker.

What to do with the negroes the House did not know, and in their uncertainty gladly abandoned their own bill and took up, amended, and passed one which came in from the Senate. A conference followed on the amendments; but an agreement was reached and the bill passed by both Houses. The act took effect on the first day of January, 1808, and declared that any negro, mulatto, or person of color imported in order to be held, sold, or disposed of as a slave, should be subject to such regulations as the States and Territories saw fit to impose.

There were two Territories and one State where the Legislatures had no choice of regulations; for, in what had once been the territory northwest of the river Ohio, slavery was forbidden by the ordinance of 1787. It must not be supposed, however, that there were no slaves in the Northwest Territory. At Cahokia, at Kaskaskia, at Vincennes, at the French settlements on the Wabash and on the Illinois, at Detroit, both Indian and negro slavery had existed long before the country came into the possession of the United States. For these unfortunate people the ordinance did nothing. It was concerned with the future, not with the past. It set no one free; it merely declared that in time to come no one within its operation should be made a slave.

That such was the true intent and meaning of the ordinance is made certain by its own language; by the meaning given to it by its framers; by the construction placed on it by those who lived under it; and by a long series of judicial decisions covering a period of seventy years.

Had slavery been abolished, the provisions that none but "free male inhabitants" should be represented, and none but "free male inhabitants" should vote, would have been meaningless. The French slave-owners on the Illinois and the Wabash, to whom the ordinance was an incomprehensible law, did, indeed, grow anxious for the safety of their property, and their anxiety was fully made known to Congress in 1789 by Bartholomew Tardiveau. The time for such a representation seemed to him favorable. The Constitution had just

gone into force. Many of the ordinances of the old Congress were to be re-enacted and amended. Among them was that of 1787, for the manner of appointing the Governor, the Secretary, and the Judges under the Articles of Confederation could not be continued under the Constitution. Tardiveau, who knew the settlers well, seized this opportunity to urge on Congress another amendment, explicitly declaring that such as were slaves when the ordinance passed were not thereby set free. He was assured that the thing should be done, and was told that there would not be the slightest difficulty in doing it, as the purpose of the ordinance was not to abolish slavery, but to prevent the introduction of more slaves. The promise was not kept, and Tardiveau entreated St. Clair to ask for the amendment, only to draw from him in reply a positive statement that the slaves were not set free.* But this comforting assurance of the Governor was soon destroyed by the action of a territorial judge. Turner had gone to Vincennes to hold court, had there quarrelled with the justice of the peace, and is believed to have incited two slaves belonging to the justice to apply for emancipation under the ordinance. That Turner would have set them free is certain; but the negroes were carried off and no decision was rendered.† The judge in a rage then ordered the kidnappers arrested, and the whole community was thrown into violent commotion. The Grand Jury of Knox County found a presentment against Judge Turner,‡ and the people sent charges to Congress as grounds for his impeachment;# the Governor censured him,‖ and a petition was soon before Congress praying for the suspension of the prohibition on slavery.^

The petitioners were but four in number. Yet it can not be doubted that the arguments they used and the reasons they stated fairly represented the sentiments of the people of the Illinois country. They complained of the ordinance as a whole because it was an ex-parte contract made by the States

* St. Clair Papers, vol. ii, pp. 117–119.

† Indiana, A Redemption from Slavery, J. P. Dunn, Jr., pp. 223–224.

‡ St. Clair Papers, vol. ii, p. 342.

American State Papers, Miscellaneous, vol. i, p. 151.

‖ St. Clair Papers, vol. ii, p. 331. ^ Dated January 12, 1796.

only, and not by the States and the people of the Territory, who would never have consented to be deprived of the benefits of slavery. They complained of the sixth article of the ordinance in particular, as contrary to the promises made them by Virginia, as contrary to natural justice in that it dissolved vested rights, and as contrary to the interests and very existence of the community. If the article abolished slavery, and some thought it did, it was retroactive and deprived them of vested rights in slaves owned before the ordinance was passed. If it did not do this, but merely set free such slave issue as was born after the ordinance went into effect, it still deprived the masters of vested rights. For surely the owners of slave parents had as fixed a right in the issue as in the slaves themselves. The article was ruinous to the welfare of the people because it shut out laborers and made wages high. Unskilled workmen, men who ploughed and sowed, reaped and dug ditches, commanded one dollar per day and their keep, which included food, lodging, and washing. Nor could many be had at that price. Journeymen in any kind of trade could easily secure two dollars per day.

These reasons, the petitioners felt, justified them in asking for a repeal of the antislavery article, and for leave to import slaves from the Uuited States and from nowhere else. If Congress would not do this, they entreated that it would at least declare that, though slaves when they came into the Territory were made free, they were nevertheless bound to serve their former masters for life. Children of such life apprentices would, of course, be free. But it seemed only fair that those who had borne the cost of bringing them up should have the benefit of their services for a time, and this time Congress was asked to fix. At the foot of the paper was the statement that the four petitioners signed for and on behalf of the people of the counties of Randolph and St. Clair. Just how they obtained this authority the committee to whom the petition was sent did not know. It did know that the admission of slavery would greatly displease the people in the eastern part of the Territory, and advised Congress not to grant the prayer.*

* American State Papers. Public Lands, vol. i, pp. 60, 61.

But the refusal of Congress by no means ended the matter. Some soldiers of the Virginia Line of the Continental Army were desirous of locating their bounty lands on the Virginia Military Reservation. They were slave-owners, and, not wishing to dispose of their negroes, petitioned the Legislature for leave to bring them into the Territory. To their amazement the Assembly unanimously resolved that the prayer was incompatible with the ordinance and could not be granted.* Thinking that, perhaps, too much had been asked, the soldiers two months later made a milder request. This time they begged for leave to bring in the slaves under certain conditions; so far as is known, they were not answered.†

Shortly after this the Territory of Indiana was cut off and the struggle for slavery began anew. Now that the people of Ohio could have no voice in the affairs of the Territory, the prospect of success seemed more hopeful, and before Harrison had organized his government the settlers in the Illinois country had a petition before the Senate. They asked that they might be suffered to bring in slaves from the United States; that those brought in should serve for life; and that the children of slaves, when born in the Territory, should not be free till the males had reached the age of thirty-one and the females the age of twenty-eight.‡ As might have been expected, the Senate laid the petition on the table. The people then resorted to a convention, for an idea was current that a memorial from such a body would carry far more weight than a petition drawn up and signed by any number of individuals. Harrison was therefore beset with appeals to call a convention, yielded, and in December, 1802, delegates from each county met at Vincennes. The memorial there prepared asked for many things: for the extension of the suffrage by doing away with the qualification of a freehold of fifty acres; for the extinction of the Indian titles to the southern part of the Territory; for land grants for schools, and pre-emption rights for actual settlers; but its burden re-

* St. Clair Papers, vol. ii, p. 447, note.

† St. Clair Papers, vol. ii, p. 451, note.

‡ Annals of Congress, 1800–1801, p. 735. Indiana, etc. By J. P. Dunn, Jr., pp. 297–299.

lated to slavery. The convention was sure that the prohibition of slavery had greatly retarded the population of the Territory. Hundreds of estimable slave-owners, who were ready and willing to settle north of the Ohio, had been forced, in consequence, to cross the Mississippi into Spanish territory. To stop this was most desirable, and it could be stopped if Congress would suspend the article for ten years and consign the negroes brought in during this time, and their progeny, to perpetual servitude. John Randolph was chairman of the committee to which the memorial was referred, and the answer which he wrote did honor to his head and heart.

The rapid growth of population in Ohio completely refuted, the report said, the statement that slave labor was needed to build up colonies north of the Ohio; as to the provision complained of, it was wisely calculated to promote the prosperity and happiness of the people of the Northwest. They might now think the restraint oppressive. But the day would come when they would find in it ample compensation for a temporary privation of laborers and population.*

Doctrine of this sort did not suit either the petitioners or their friends in the House, and the report and memorial were recommitted.† The three men then chosen came from Delaware, Kentucky, and Tennessee, and soon advised the House to suspend the antislavery article, allow slaves to be taken into the Territory for ten years, but free the male children of such slaves at twenty-five and the female children at twenty-one. Again nothing was done. Meanwhile the judges and the Governor of the Territory acted on their own responsibility and adopted from Virginia a "Law concerning Servants." ‡ It related not only to whites but to "negroes, mulattoes, and other persons not citizens of the United States," which was interpreted to mean Indians. Any such person coming into the Territory under contract to serve another was to be forced to make that contract good. If a white man, he could not, however, be sold to a negro or an Indian, nor be sold or assigned unless he consented. Henceforth emigrants owning a

* American State Papers, Public Lands, vol. i, p. 146.

† Annals of Congress, 1803–1804, p. 779.

‡ Laws of Indiana Territory, September 22, 1803.

slave had but to free him, make a contract of service for life, and enter Indiana without fear of molestation.

To the people of the Illinois region the act concerning servants, however, was far from satisfactory. But they thought they saw a way of escape. Louisiana had just been purchased. The treaty had just been approved by the Senate, and a vast area where slavery already existed had been added to the United States. Could they be joined to Louisiana they would once more be in a land of slavery, and their dearest wishes would be attained. With a promptness which showed their eagerness, they at once petitioned Congress to be set off from Indiana and attached to Louisiana. Congress did not consent, and the contest went back to the Territory. The proslavery men seem now to have been seriously alarmed. They were then in the majority. But antislavery men were coming in, and the day was near when they would surely be in the minority. Whatever they did must be done at once, and must be done through a territorial legislature. The Governor and the judges could give little help. They had no power to enact laws, but merely to adopt laws, or parts of laws, already on the statute-books of the States. As the ordinance forbade the introduction of slavery, they could not adopt the slave code of any State, and, in adopting the indenture laws, had gone quite as far as they could. Congress, it was clear, would give no help, for three times their petitions had been refused. All hope, therefore, centred in a territorial legislature, with power to make laws, and a territorial delegate to explain the needs of the people to Congress. Agitation for this was accordingly begun, was successful, and in December, 1804, Indiana became a Territory of the second grade.

And now the wishes of the proslavery men were speedily gratified, and at its very first session the Assembly passed "an act concerning the introduction of negroes and mulattoes into this Territory." Under it anybody owning a negro boy or wench not fifteen years old, and wishing to live in Indiana, had but to enter the name and age of the negro on the records of a court of common pleas. He could then hold the boy till he was thirty-five or the girl till she was thirty-two. To hold a negro over fifteen the owner must, within thirty days

after entering the Territory, go before the clerk of a court of common pleas and agree with the negro as to the number of years of service. Should no agreement be reached, the slave must, within sixty days, be taken from the Territory. *

The promulgation of this law threw the Northwest into commotion. A Cincinnati newspaper published a part of it surrounded with inverted column-rules. "Eumenes," "Corpus Callosum," and "Benevolensus" hotly discussed it in the press. The National Intelligencer cried out that the ordinance had been violated and the Union threatened; that other Territories would be tempted to do the same; that the slave trade would be stimulated; that the Governor and Council ought to be removed; and that Indiana ought never to be admitted as a State till the wicked act had been taken from her statute-book.

The people took up the discussion, brought it into politics, and beseiged the Assembly with petitions for and against the admission of slaves, and drew from it a long report against the suspension of the antislavery article of the ordinance, against the importation of slaves, and in favor of the repeal of the indenture law. But it was not till Illinois had been cut off and Indiana left to herself that the antislavery party triumphed and the laws for the indenture of negroes were repealed. This was in 1810. By that time much harm had been done. Numbers of negroes had been indentured for terms far exceeding threescore years and ten, and were held in slavery long after Indiana became a State. For the courts, while they declared the indenture law to have been null and void, held that, by the Constitution of the State, the negroes must perform the service called for in the indentures †

In Michigan the struggle for slavery was quickly ended. Hardly had the Territory been organized when two negro slaves summoned their owner by a writ of habeas corpus to answer for their detention. The negroes held that they were free by the ordinance of 1787. The owner held that they

* Laws of Indiana Territory, first session, first Assembly.

† The history of this antislavery struggle in Indiana is told most interestingly and with great fulness of detail in Indiana, a Redemption from Slavery, by J. P. Dunn, Jr.

were slaves because they had been such when the British gave up the frontier posts in 1796, and because as such they were guaranteed to her by Jay's treaty. In this position the Court sustained her. The ordinance, the judge decided, did not emancipate slaves, but forbade their importation. Every man who was held in servitude on the thirteenth of July, 1787, when the ordinance became law, was still in that condition. Every man who since that day had entered the Northwest Territory was free, provided he came into that part where the ordinance was in force. In Michigan it was not in force till June sixteenth, 1796, when the British flag was lowered and the frontier posts given up. Under this ruling no slave of a British subject living in Michigan at that time, though brought in after 1787, could claim the benefit of the ordinance.

In the Illinois country the struggle for slavery did not end with the separation from Indiana in 1809. The laws in force when the two Territories were one continued to be in force in Illinois long after it had been cut off, and among these were the "Act concerning servants" and the "Act concerning the introduction of negroes and mulattoes into this Territory." Thus fastened on the Territory, slavery continued to distract the politics of Illinois for fifteen years.

Of all the men who suffered for the part they took in the slavery trouble in Indiana, the greatest loser was William Henry Harrison. He had early allied himself to the pro-slavery men; had called the convention and approved the memorial of 1802; had passed the Servants Act of 1803; had passed the indenture laws of 1805 and 1807; and had sanctioned and supported every petition for the suspension of the antislavery article of the ordinance that went to Congress. With the triumph of the antislavery party he became one of the most hated men in the Territory. His party was in the minority. His popularity was gone, and to get it back he determined to do some act which would greatly please the people. Nothing at that moment was nearer their hearts than an extension of their Territory northward. Save the little strip between the Ohio boundary and the Indian line of 1795, a tract about Fort Wayne, a tract two miles square on the portage of the Miami, another six miles square at Old Wea Town

on the Wabash, and a strip some sixty miles wide along the Ohio river from Ohio to Illinois, not a foot of the Territory had been relinquished by the Indians. How long and how eagerly the people desired an expansion of this Territory is apparent in their many petitions to Congress. This wish Harrison now undertook to gratify. Authority was accordingly asked of Secretary Eustis to make a new purchase from the Indians, and in July, 1809, it was given.* The chiefs of the tribes who claimed the soil—the Delawares, the Pottawatomies, the Miamis, and the Eel Rivers—were quickly assembled and a treaty of cession signed, sealed, and delivered at Fort Wayne.† Another‡ with the Kickapoos followed, and the Indian title to three millions of acres was extinguished. If this purchase made him once more popular in Indiana, what followed made him trebly so all over the West, for the direct and immediate result was the battle of Tippecanoe.

Upward of thirty years before, the squaw of a Shawanee warrior gave birth at one time to three boys. The triplets grew to manhood. One is said to have been an Indian of no uncommon ability. But two of the brothers—Tecumthe, the Crouching Panther, and Olliwochica, the Open Door—were prodigies. Tecumthe, bold, daring, and energetic; skilful in war, wise in council, an orator of no mean order, and a bitter hater of the whites, was the ideal Indian of the school of Cooper. But with these showy characteristics were mingled others of a higher kind. His self-command, his powers of combination, his knowledge of men, and the management of men, might have excited the envy of the foremost statesmen of his time. A bitter hater of the white man, he seems to have been greatly excited by the long series of treaties by which the red man was slowly and surely being driven westward. The cessions of 1804 and 1805 especially excited him, and it was then, in all probability, that he formed the purpose of finishing the work Pontiac had undertaken and left undone. This was nothing less than the formation of an Indian republic, than the union of every Indian tribe from Canada to

* Secretary Eustis to Harrison, July 15, 1809. American State Papers, Indian Affairs, vol. i, p. 761.

† September 30, 1809. ‡ December 9, 1809.

Florida on a democratic basis. Tribal organizations and distinctions were to be ignored. The chiefs were to count for little. The warriors were to count for much. They were to own the land, and everything concerning their welfare—their wars, their treaties, their struggle with the whites—was to be settled at a great congress, not of chiefs, but of Indian representatives. In this vast undertaking he was most ably helped by his brother Olliwochica, better known as the Prophet.

With much of the ability of Tecumthe, the Prophet possessed gifts his brother did not, and, taking up the rôle of medicine-man and prophet, he became famous. All the power which Tecumthe held over the natural side of Indian character the Prophet held over the supernatural side. In the hands of the two brothers the Indians were therefore mere puppets. Seizing on the flurry of excitement which followed the treaties of 1804 and 1805, the brothers began the formation of their league about 1806, and were aided by two events which happened in 1807. One was the Leopard-Chesapeake fight, which led the Governor-General of Canada to seek to rouse the Indians against the United States. The other was a treaty of cession negotiated by Hull at Detroit, which accomplished what the Governor-General attempted. The Indians in their rage talked openly of killing the chiefs who signed it, and led the agent at Fort Wayne to believe that the treaty had been dictated by the British for the very purpose of exciting them. The northern Indians then joined Tecumthe's league, and in 1808 he took possession, with his brother, of the lands on Tippecanoe Creek just where it enters the Wabash.

The place was a strategic point. To the northwest a hundred miles or so lay Fort Dearborn, now Chicago. To the northeast lay Fort Wayne, whence there was water communication with Detroit. Down the Wabash, within easy reach, was Vincennes. Apparently, however, the Tippecanoe Indians had no thought of strategy and war, for they laid out a town, began to cultivate the ground, gathered stock, talked peace, and set an example to the white men by using absolutely no whiskey. But reports which came to the War Department told a very different story. One writer declared that the prayers and religious exercises at the Prophet's town were constantly min-

gled with warlike sports. Another reported that Indian medicine-men had been busy all winter persuading the tribes on the Mississippi to make ready for a frontier war. The agent at Fort Wayne wrote that the Indians thereabouts were excited over the conduct of the Prophet; that he had told the Chippewas, the Ottawas, and the Pottawatomies that the Great Spirit bade them take the tomahawk, destroy Vincennes, and sweep the Ohio from Cincinnati to its mouth. Yet another sent assurances that the Prophet would soon attack the settlements and drive the people from the Wabash and the White rivers.*

Notwithstanding this information, Secretary Eustis considered it wise to excite the Indians yet more, and bade Harrison make the treaty of 1809, which deprived them of the valley of the Wabash, the last hunting-ground they possessed in Indiana. The Wyandots now joined the confederacy, from which came forth a declaration that the cession was void and that the tribes would not be bound by it. That war did not instantly break out was due to the British traders, who assured Tecumthe that war between the United States and England was close at hand and urged him to await the signal from Canada. Reports from Sandusky, from Detroit, from Fort Wayne, from St. Louis, from Vincennes, were full of indications of coming trouble. There were gatherings at the Prophet's town. The English agents at Fort Malden were supplying arms. Tecumthe, when the yearly allowance of salt reached him, refused to receive it. In this state of affairs Harrison sent for him, and in August a long conference was held at Vincennes.

Tecumthe announced that he was most anxious to be a friend to the United States. Against the Great Chief at Washington he had no cause for complaint save the land purchases. If, therefore, the late purchases were given up and an agreement made never to purchase in the future without consent of the tribes, Tecumthe would enter into a firm alliance with the United States and join her in war against England. If not, he would resist with force every attempt to take possession of the new purchase, and ally himself to Eng-

* American State Papers. Indian Affairs, vol. i, pp. 798, 799.

land. Harrison assured him that his request could not be considered, and the two parted. The Secretary of War now wrote Harrison to put off the military occupation of the purchase, and the winter of 1810 and 1811 saw no Indian outbreak on the Wabash. The Indians, however, were restive and menacing. Early in February, Harrison sent word to Washington from Vincennes that the British agents were again exciting the tribes.* The commandant at Fort Wayne recommended a garrison on the Wabash near the Prophet's town,† while from Chicago ‡ and St. Louis # came word of horses stolen, of hostile "talks" and meetings under the influence of the Prophet. In June, as the annuity of salt for the northwestern tribes was on its way up the Wabash, the Prophet seized the boat-load, though only five barrels belonged to him. ‖

Aroused by this, Harrison sent him a letter, or, as the Indians called it, a talk,△ and received word in reply that Tecumthe would come to Vincennes. A few weeks later, accordingly, the chief, with three hundred warriors, entered the town.◊ There he remained for two days, and then went southward with twenty warriors to persuade the southern Indians to join his confederacy. Hardly were the Indians out of the town when the people met at the Seminary, adopted resolutions, and ordered an address to be sent to Madison. They expressed a firm belief that the Tippecanoe settlement, the action of Tecumthe, and the refusal to sell the land were all parts of a British scheme. They denounced a temporizing policy, endorsed the promptness of Harrison, and called for the suppression of Tecumthe and the breaking up of the settlement on the Wabash. The whole frontier was by this time alarmed, petitions were made by the people of Illinois for forts and block-houses, and Harrison began to gather troops. These, as fast as they volunteered, he sent up

* Harrison to the Secretary of War, February 6, 1811.

† Captain Johnson to the Secretary of War, February 8, 1811.

‡ W. Irvine to the Secretary of War, May 13, 1811.

General Clark to the Secretary of War, May 24, 1811.

‖ Harrison to the Secretary of War, June 19, 1811.

△ Harrison to the Prophet, June 24, 1811. Dawson's Life of Harrison, p. 179.

◊ Harrison to the Secretary of War, August 6, 1811.

the Wabash to form a camp, build a fort, and take formal possession of the new purchase. While the soldiers were at work on the fort, a sentinel, one night in October, was shot and wounded. Supposing that an Indian fired the shot, and construing it to be the beginning of war, Harrison sent back to Vincennes for more troops, broke up his camp, and moved up the Wabash to the north boundary of the purchase. Over that line he had no right to go with troops unless he meant to fight. But he did mean to fight, and, crossing the Vermilion river, moved on, till about sunset on the evening of November fifth he was within eleven miles of Tippecanoe. During the march of the following day Indians were seen in front and on both flanks. Interpreters were then sent to the advance guard to open communications. But the Indians refused all overtures. Some four miles from the Prophet's town the troops entered a tract of country broken by ravines and covered with dense woods and thickets. Here Harrison fully expected to be attacked. To his surprise, he was suffered to pass through unmolested to an open plain a mile and a half from the Prophet On this he proposed to camp; but his officers protested, grew urgent, and, Harrison yielding, ordered an advance with the intention of attacking the town. At that moment three Indians, sent with peaceful messages from the Prophet, came in sight. A parley followed, and Harrison agreed to go into camp and hold a conference with the Prophet in the morning. The spot chosen for the camp was a bench of high land covered with oak and about a mile to the northwest of the town. The front or side toward the Indians rose ten feet above a marshy prairie, and the rear about twenty feet above a small stream, whose banks were overgrown with willow and dense brushwood. A spot better suited for Indian warfare could not have been chosen. Nevertheless, Harrison determined to occupy it, arranged his troops in the form of a triangle to suit the shape of the ground, pitched his tents, threw up no intrenchments, but, drawing a line of sentinels about the camp-fires, awaited the morning. His custom while on the march had been to call the troops an hour before dawn and keep them under arms till daylight. On the morning of November seventh he had quitted his tent about a

quarter before four, to give the signal for rousing the men, when suddenly a sentinel on the left flank fired a gun, and the Indians came yelling into camp. The firing at once became general along the whole line, save for a short space on the creek, and the battle of Tippecanoe began. During two hours it was fought in the darkness. With daylight the troops charged the Indians, dislodged them from behind the trees, drove them into the swamp, and there the fighting ended. The slaughter had been terrible, for the light of the camp-fires had greatly helped the Indians' aim. How fatal that aim was is well shown by the fate of one unfortunate officer—Captain Spier Spencer. He was first badly wounded in the head. Keeping his place in the line, he was shot through both thighs, fell, was lifted up, was instantly shot through the body, and died. But he did not fall alone, for, when the account was taken of the casualties, one hundred and eighty-eight men were found to be killed or wounded. Thirty-four of these were officers, and among them was Major Joseph H. Daveiss, who died some hours later of his wounds.* Harrison could not believe that the battle was over, and all that day and all the next night the troops remained in camp awaiting a new attack. None was made, and on the morning of the eighth they set out for the Prophet's town, which they found deserted. Such had been the haste of the Indians that nothing was carried off or destroyed. Taking such provisions as the soldiers needed, and abandoning camp furniture and private baggage to make room in the wagons for the wounded, Harrison fired the village and began his march homeward. On November eighteenth he reached Vincennes. His friends received him with every manifestation of delight. The Legislatures of Kentucky, of Indiana, and of Illinois thanked him for his services, and he became for the time being the popular hero of the West. But with praise was soon mingled blame. The Federalists of Kentucky, who could not forget that Harrison was a Republican, set upon him savagely. They denounced him as a scheming busybody. They accused him

* Harrison to the Secretary of War. American State Papers. Indian Affairs, vol. i, pp. 776–779. The killed were, officers, 10; privates, 52. The wounded were, officers, 24; privates, 102. Total, 188.

of making war without just cause and for his own ends, and attributed the death of Daveiss to his military blunders.

The immediate result of the battle fell short of what was expected. While the flush of victory lasted it was supposed that the Indian power was broken, that the Confederacy would fall to pieces, and that Tecumthe and the Prophet would be given over by the Indians to the United States. None of these things came to pass immediately. The influence of the Prophet did indeed perceptibly diminish. Yet in a few weeks he was once more in his village and, with the opening of the new year, the frontier was again distracted by rumors of a war. Tecumthe had returned from his Southern tour.

Leaving Vincennes in July, Tecumthe and his twenty warriors hurried southward, crossed the country of the Chickasaws and the Choctaws, and in October reached Tuckaubatchee, a Creek town on the Tallapoosa river. There the annual council of the Creeks was to be held, and there in the midst of a great gathering of Indians—Creeks, Choctaws, and Cherokees—brought to the spot by the report that he would be present, he delivered his talk. In the speech before the council Tecumthe seems to have urged unity and peace. But his presence, or perhaps the fame of his brother's skill, perhaps his conversations in private, greatly excited the younger warriors. Prophets began to appear who undertook to rouse a war spirit against the whites, and to overthrow the authority of the chiefs. They sang the songs and danced the dances of the Indians of the lakes. They called to their aid all that was terrible in magic and all that was grand and mysterious in nature. Amidst shrieks, cries, and the signs of hysteria they gave forth prophesies predicting all manner of evils for those who did not receive, or, receiving, made known their "talks." Towns which refused aid to the prophets were to be destroyed by the lightning, or swallowed by earthquakes, or covered up by the hills that were to be toppled over upon them. Such as did give aid were to suffer no harm, for the prophets would draw a magic line around them and make the earth an impassable quagmire. Well knowing that the arts of peace the Creeks had so long been cultivating were ruinous to

a spirit of war, the prophets became the enemies of civilization and were soon calling on the people to break their looms, kill their cows and hogs, and do no work of any kind. Of all this the old chiefs of the confederacy knew nothing and looked on the dancing and singing of the followers of the prophets as the foolish amusement of the idle and the giddy. Having started this fanaticism in the South, Tecumthe came North through the Osage country and reached Indiana in December.

That he would seek vengeance on the settlers for the victory at Tippecanoe was fully expected. No surprise was felt, therefore, when, in April, 1812, war began along the frontier. During that month ten men were murdered within three miles of Fort Dearborn. Several more were killed near Fort Madison on the Mississippi, near Sandusky, near Defiance, and near Greenville in Ohio. A whole family was massacred not five miles from Vincennes, and one settler scalped near the Ohio and another on White river.*

And now the outlying population of the Territory took to flight, and a stream of fugitives came pouring through Vincennes on their way to Kentucky. Still others, abandoning their farms, took refuge in block-houses or such temporary forts as they could build hastily, where they suffered terribly for the necessaries of life.† Even Vincennes was not thought safe, and it seemed not unlikely that, if a general Indian rising took place, Indiana would be depopulated. But Tecumthe most happily was not ready. Meantime he continued to assert his friendship for his white brothers, treated the affair at Tippecanoe as of slight moment, declared that the border murders were the work of the Pottawotomies, over whom he had no control, and waited for the signal from Canada.

While one agent of the Government was thus exciting the Indians to war in the far Northwest, another agent was doing his best to excite the Spaniards and the Indians in the far Southeast. Under authority of the act of January fifteenth, 1811, which was no longer a secret,‡ Madison selected General George

* American State Papers. Indian Affairs, vol. i, pp. 807, 808.

† Harrison to the Secretary of War, ibid., p. 808.

‡ Though ordered by Congress not to be made public, a copy of the law was obtained and published by the Connecticut Mirror and by the True American.

Matthews and Colonel John McKee to be commissioners to proceed to East Florida. The purpose of the United States was to take possession of East Florida and hold it, lest, in the turbulent condition of the Spanish monarch, some foreign power should seize it. The country was, however, at some future day, to be returned to Spain. Matthews and McKee were therefore instructed to take peaceful possession if the Governor would surrender it, or forcible possession if they had any reason to suspect the approach of a foreign power. Arriving at St. Mary's, a little town on the American side of the boundary line, Matthews found a state of affairs which seemed to him to justify instant possession on the principle of self-preservation. The river was full of British craft busily engaged in smuggling British goods, wares, and merchandise into the United States in violation of the Non-importation Law. Amelia Island, which lay off the Florida coast just at the mouth of the St. Mary's river, was a nest of smugglers. Fernandina, the Spanish town on the island, was a mere depot for illicit trade. The authority of Spain was purely nominal, for there was in fact no law of any kind in force.

Matthews, however, set about his work, opened negotiations with the local authorities, and, after spending six months in making inquiries, concluded that quiet possession was not to be obtained. The profits of the smuggling trade were too great to be willingly surrendered. Supposing that the country was to be taken by some means, he therefore recommended Madison to employ force. The people of East Florida should, he thought, be encouraged to do what the people of New Feliciana had already done—revolt and declare East Florida independent, and bring it over to the United States. Help would be needed to accomplish this. But if the President would furnish the commandant at St. Mary's with two hundred stand of arms and fifty horseman's swords, Matthews would see that they reached the people without in any way committing the United States. These views were yet more fully stated to William H. Crawford, a Georgia Senator, and by him were communicated to Madison. As no objection was made, Matthews presumed that silence gave consent, and began to organize the revolution. As agents he selected the post-

master at St. Mary's, the United States Deputy Marshal, and a well-known Spanish subject named John H. McIntosh. By them in the course of the winter and spring a band of some two hundred adventurers was quietly collected and armed, and one day in March, 1812, was taken over St. Mary's river into Florida. There, on a bluff some six miles above Amelia Island, they camped and raised a white flag, on which was a soldier charging bayonet and the motto, "*Salus populi—suprema lex.*"

On the island was Fernandina, a Spanish post held by ten men under the command of Don Justo Lopez. The commander of the patriots, as they called themselves, was John H. McIntosh, and by him, on the morning of March fifteenth, a flag of truce was sent to Lopez. The determination of the United States, so the note ran, to take possession of East Florida had induced some of the inhabitants of the province to do it themselves. Accordingly, under the patronage of the United States, they had taken possession of the country from St. Mary's river to St. John's, and now summoned Fernandina to surrender. In the harbor were then lying at anchor nine gun-boats belonging to the United States. The commander of the fleet was Hugh Campbell, whose duty in those waters was to stop the smuggling and enforce the Non-importation Law. To him Lopez despatched two messengers with a note telling what the patriots had stated, and asking if he had orders to aid them. Two other messengers were at the same time sent off with a note of similar purport to Major Laval, who commanded the United States troops at Point Peter. Campbell referred the whole matter to General Matthews. But Laval replied that he had no orders to help the patriots. Now, it so happened that General Matthews was at that moment in the camp engaged, as the commandant assured the messengers, in attempting to entice the troops to join the patriots. With him, therefore, the messengers had an interview, told him plainly that the patriots were Americans, brought into Florida under his promise of five hundred acres of land to each of them if the revolution was successful, and that in the eyes of Spain the affair was an American invasion of her territory. The messengers then went on to the Patriot

camp, assured the commander that Lopez would not under any circumstances surrender to him, but would treat with the United States. An agreement was therefore made that all parties should meet on the morrow in the patriot camp on Belle river. But the conference accomplished nothing, and the messengers returned to Amelia Island to find Fernandina under the guns of the United States gun-boats. Early in the morning Campbell had dropped down from St. Mary's and taken position before the town. In the afternoon the patriots came down the river in boats. The garrison, some ten men, marched out and grounded arms, Lopez gave up his sword, and McIntosh hauled down the Spanish flag and ran up that of the patriots instead. In the articles of capitulation was one which declared that in twenty-four hours after the capitulation the island should be surrendered to the United States, but should be exempt from the Non-importation Law. This was done, and before noon on March eighteenth, 1812, the flag of the United States was flying over the fort at Fernandina, and a company of United States riflemen were in possession. The patriots then set off to reduce St. Augustine.

With them went a detachment of United States regulars. Marching to within two miles of the town, the army camped at a place called Fort Moosa. When Madison heard of these things he recalled Matthews, and requested Governor Mitchell, of Georgia, to take his place. Should he, on reaching St. Mary's, see no prospect of foreign occupation, he was to withdraw the troops, restore Amelia Island, and take care that those who, relying on the protection of the United States, had engaged in the revolution, did not fall a prey to the anger of the Spanish governor.

Mitchell willingly accepted the mission, and hastened to St. Mary's, where he found the situation more serious than ever. The patriots showed no disposition to retire. Indeed, at a meeting held at the camp before St. Augustine, they called for five hundred more troops, and pledged their sacred honor not to lay down their arms till independence was secured. Having no money, they promised that all who should join them should be paid in land or in such property as might be taken

from their enemies.* Before the new troops could be enlisted the Spaniards armed a schooner, came up the creek, shelled Camp Moosa, and forced the patriots to fall back to Pass Navarro,† and then to St. John's.

Alarmed by this attack, Governor Mitchell sent to Savannah for aid. The Republican Blues and the Savannah Volunteer Guard at once offered, and were soon on their way to St. Mary's.‡ Their arrival was quickly followed by an express bearing news of the declaration of war. Seventeen English ships at anchor were instantly seized, a great quantity of floating timber cut for the use of the English navy was confiscated, and a new call sent to Georgia for troops. A hundred men from the region about Milledgeville responded.

The fate of West Florida had been settled meantime by Congress. So much as lay south of thirty-one degrees and between the Mississippi and the Pearl rivers was by an act# added to what was once the Territory of Orleans, but was then the State of Louisiana.‖ So much as lay between the Pearl and the Perdido was by another act annexed to Mississippi Territory.△ The act was almost a declaration of war; for when Madison signed it the Spanish flag was flying at Mobile, and Spanish soldiers held the country in the name of Ferdinand VII.

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* May 2, 1812.

† May 17, 1812.

‡ June 12, 1812.

Act of April 14, 1812.

‖ Act of April 8, 1812. Went into effect April 30, 1812.

△ Act of May 14, 1812.

CHAPTER XXIII.

MAKING READY FOR WAR.

The proclamation of Madison declaring the United States at war with Great Britain and her dependencies was issued at Washington on the nineteenth of June, 1812. To understand the dangers and the difficulties into which the country was thus plunged it will be well to consider what was to be done and what were the means of doing it. In the first place, an enormous extent of frontier on the northern and northwestern boundary line, sparsely settled and almost cut off from the East by lack of good roads and easy ways of reaching it, was to be defended against British regulars, Canadian militia, and the Indians. Though this frontier stretched from Eastport to the Rocky Mountains and the undefined Oregon country beyond, the part to be defended, it is true, was not much more than a thousand miles in length. The region northwest of the Mississippi was a wilderness. The country on the south shore of Lake Superior was not inhabited. At the foot of the falls of Sault Ste. Marie, on the Canadian side, was an English trading post, where Indians from the Missouri, and factors from Montreal met each summer to barter furs for gunpowder and rum. But no Indian beheld the flag of the United States till he came in sight of the Straits of Mackinaw, where, on the island of Michilimackinaw, was the most northwestern post of the United States east of the Rockies. At the foot of Lake Michigan was another feeble post, Fort Dearborn. But neither on Lake Huron, nor along the banks of Huron river, nor on Lake St. Clair, was there a post or a force of any kind. On the Maumee was Fort Wayne; on the Wabash was Fort Harrison. But the only fort that could

be called formidable, the only gathering of troops that could be considered effective in the whole northwest was at Detroit, which, for military purposes, was regarded as the western end of the frontier. The eastern was Lake Champlain, beyond which the woods of New Hampshire and Maine formed a barrier no army would think of attempting to break through. Between these limits was the exposed frontier made up of two short rivers, three great lakes, and so much of the forty-fifth parallel as lies between the St. Lawrence and Lake Champlain. This was wholly defenceless, for there was no navy on the lakes, and there were no defences of any consequence on the land.

The condition of the Atlantic seaboard was even worse. It stretched from Passamaquoddy southward through fourteen degrees of latitude to St. Mary's river; it abounded in fine harbors and was broken by large bays and cut by large rivers navigable far into the heart of the country, yet for defence against the greatest of naval powers it depended on a navy of sixteen frigates, ships, and armed brigs, one hundred and sixty-five gun-boats, and such forts as had been hastily built in the exciting times of 1798 and 1807.

The Southern frontier was quite as exposed. There were indeed troops at Amelia Island, at Fort Stoddert, at New Orleans, and on the Red river; but the towns of St Augustine, Pensacola, Mobile, and the Sabine country were in Spanish hands. Spain was closely allied with England, and no one could say how soon these towns and forts might be occupied by British troops, nor what the Indians, aroused by the visit of Tecumthe and supplied with British guns and powder, might do. Westward and northwestward of the Mississippi there was no boundary line and no frontier to defend save that commanded by the far-away port of Astoria lately built on the Columbia river.

The army on which was to fall the brunt of defending this frontier was, when war was declared, partly in the field and partly on paper. The part in the field consisted of the ten old regiments with ranks half filled and scattered all over the country on garrison duty; that on paper consisted of the thirteen new regiments of regulars to be enlisted for the conquest

of Canada, the fifty thousand volunteers yet to be raised, and the one hundred thousand militia to be detached from the States and mustered into the service of the United States. Enlistments for the regular army began in March. Every man who enlisted for five years was given a bounty of sixteen dollars down, and was promised food, clothing, and five dollars per month, and, at the end of the time of service, fifteen dollars and one hundred and sixty acres of land. Yet when June came, though no full returns had been made, it was well known that four thousand soldiers had not been secured.

Even when war actually began and the Canadians might any day come over the border, when the Indians might sweep the frontier, or an English fleet destroy New Orleans, the people showed no disposition to fill the ranks of the regular army. Congress had by that time increased the war establishment to thirty-two regiments which, with the engineers and artificers, made an army on paper of thirty-six thousand seven hundred men. Yet not one third of it was raised. Of the fifty thousand volunteers, not one twelfth had offered. After the declaration, in the States where the war was popular, or fear of the Indians pressing, the ranks of the volunteer regiments began to fill. But in New England every expedient had to be resorted to in order to get soldiers. Then was it that men who had made up their minds to stay at home made tempting offers to such as would go. The Republicans of Newtown, in Massachusetts, agreed to pay any inhabitant of the town who would volunteer four dollars and fifty cents per month while in the field. Roxbury voted to raise the pay of her citizens serving in the army to fifteen dollars per month. West Cambridge was more generous yet, and besides raising the monthly pay of fifteen added a bounty of five. At Lexington the bounty was six and the pay ten dollars. This made the war fever rage so fiercely that a draft was necessary to determine who should stay at home. In Kentucky, popular as the war was, the Legislature thought it prudent, in order to keep troops in the field, to give each volunteer seven dollars per month in addition to the five paid him by the United States.

Where the war was unpopular these inducements accomplished nothing, and it became plain that the chief dependence

must be the militia. But when, in accordance with the law, the Secretary of War issued the call for militia, the Governors of three New England States flatly refused to obey. From Massachusetts were asked forty-one companies to be scattered along the coast from Newport, in Rhode Island, to Castine and Machias. From Connecticut five companies were required, some to do duty at New London and some to man the battery on New Haven Bay. But Roger Griswold, then Governor of Connecticut, declared the call was unconstitutional and did not heed it. The Federal Constitution, he held, named three purposes, and but three, for which the President could call on the States to furnish militia. These three were, to repel invasion, to put down insurrection, and to execute the laws of the United States. No State was invaded; no insurrection was going on; no laws were being defied. The call could not therefore legally and constitutionally be made. Had any of these conditions existed, the action of the President would still have been unlawful, for, while the Constitution provided that militia should be commanded by officers chosen by the States, those now wanted were to be commanded by the United States officers at Fort Trumbull.

Holding such views, Griswold at once summoned the Council of State, laid the whole matter before them, and asked what to do. The Council, consisting of the Lieutenant-Governor and twelve assistants was the upper house of the State Legislature, voted that the Governor's views were correct and urged him not to comply with the requisition. Against this the Secretary of War protested strongly, declared the reason given for keeping back the militia as amazing as the act itself, and assured the Governor that, in the opinion of the President, danger of invasion did exist and that this was justification enough. Again the Council was gathered, and again the Governor was advised not to comply. By the Constitution it was said certain powers were "delegated to the United States," while certain other powers were "reserved to the States respectively." Among the powers delegated were those of making war, raising armies, of calling out the militia to quell insurrection, to repel invasion, to execute the laws of the Union. Congress had seen fit to use the first of these and declare war

before it had the wisdom to use the second and raise an army. Were the States, therefore, bound to find it an army, to detach their militia, and send them into the forts and garrisons of the United States to do the duty of regular soldiers? No. The sovereignty of the State must not be encroached on, and it was not consistent with the powers reserved to order the militia of the State into the service of the United States when none of the cases mentioned in the Constitution existed.

That his position might be made stronger still, Griswold now called an extra session of the General Assembly, and, in a long message, told what he had done. The Assembly sent the matter to a joint committee, and the committee made a long report. The war was denounced; the conduct of the Governor was approved. The doctrine of State rights was laid down in a form which, in 1798, every Federalist would have pronounced odiously Democratic. Connecticut, the report set forth, was a free, sovereign, and independent State. The Union was a confederation of States. The United States was a confederated and not a national republic. The Governor was under obligations just as high and solemn to support the Constitution of Connecticut as he was to support the Constitution of the United States. He must not suffer her sovereign rights to be invaded, and one of these sovereign rights was the power to officer and control the militia. The Assembly accepted the report and defended the Governor's conduct in an address to the people.

In Massachusetts, the Governor sought advice of the Supreme Court of the State, and asked two questions of the judges. Did the Governor of a State, when a call was made by the President for militia, have a right to determine whether either of the constitutional conditions for making such a call existed? When the militia were called into the service of the United States, could they be commanded by any other persons than their own officers and the President of the United States? On the bench sat Theophilus Parsons and Samuel Sewell and Isaac Parker, men whose names are still remembered in the judicial annals of our country. Their ability can not be questioned. Nor is it for a moment to be supposed that they would suffer the opinions which they held on politics to influ-

ence the decisions which they made on the bench. Yet their answers were: Yes, to the first question; and to the second, No.

When the Governor of Rhode Island received his requisition he called a council of war and asked two questions: Could the militia be detached save for either of the three purposes named in the Federal Constitution? To this the council said No! They were then asked who, when the militia were called for, was to decide whether any of the three conditions existed, and to this the council answered, The Governor.

To command the army thus slowly gathering under these disheartening circumstances the President had selected and the Senate had confirmed a long list of officers. As a class, they were old, vain, respectable, and incapable. Henry Dearborn,* now made senior Major-General, was past sixty, had been a deputy quartermaster-general in the army of the Revolution and colonel of a New Hampshire regiment after the peace, had sat in the Cabinet of Jefferson, and had been collector of the port of Boston. Thomas Pinckney, the junior Major-General,† was sixty-three, and acquired what little he knew of war in the guerilla campaigns in the South. Under Marion and Sumter he had chased Tories and harassed the British, had served on the staff of Horatio Gates, and had been a politician ever since the peace. In 1789 he was made judge for the District of South Carolina, Minister Plenipotentiary at London in 1792, Envoy Extraordinary to his Catholic Majesty in 1794, had negotiated the first of our treaties with Spain, and had been a member of Congress in the stormy days of Adams's term.

At the head of the list of brigadier-generals stood the name of James Wilkinson, the most infamous man then wearing the uniform of the United States. He had just been tried by a court-martial on the ground that he was a pensioner of Spain, an accomplice of Aaron Burr, an officer insubordinate, negligent, wasteful, and corrupt. Every charge was well founded. But the Court had seen fit to acquit him, Madison ap-

* Nominated January 20, 1812. Confirmed January 27, 1812. Yeas, 27; nays, 9.—Executive Journal of the Senate.

† Nominated March 24, 1812. Confirmed March 26, 1812.—Ibid.

proved the verdict, and he was retained in his old command. With him as juniors were joined Wade Hampton, Joseph Bloomfield, once a major in the Continental Army and for ten years past Governor of New Jersey; James Winchester, of Tennessee, William Polk, of North Carolina,* and William Hull, Territorial Governor of Michigan.† Winfield Scott, who knew that army well, declares that of the old officers many were sunk in sloth and many ruined by intemperate drinking; that of the new appointments some were positively bad and others indifferent, and that, as a class, the officers were swaggerers, political dependents, poor gentlemen who, as the phrase went, were fit for nothing else.

Very different was the condition of our navy. To the English seaman who looked over the navy list, who counted up the score of frigates, corvettes, armed brigs, and schooners, who recalled the affair of the Leopard and the Chesapeake, and had been present many a time when American citizens were taken from the decks of American ships, both the navy and the spirit of the people seemed beneath contempt. Yet no better navy existed anywhere. No frigates finer than the Constitution and the United States were then afloat. No captains abler than Hull, than Decatur, than Bainbridge, than Perry, than Lawrence, sailed under the flag of any nation. Nor were the crews one whit behind the officers in all that appertains to seamanship and gunnery. Not a vessel but had before the mast some men who as navigators, as commanders, as cool and deliberate fighters, will bear comparison with the average English captain. The reason is plain. Our whole coast from Eastport to the Chesapeake was a great nursery of seamen. The East Indiamen and the West Indiamen, the fishing fleet, the whalers, and the sealers would, under any circumstances, have been a nautical school of no mean order. But the enormous expansion of the neutral carrying trade, in consequence of the European wars, put up the wages of the common sailor to thirty dollars a month, and drew into the merchant marine and placed before the mast thousands of

* Nominated March 24, 1812. Confirmed March 25, 1812.

† Nominated April 3, 1812. Confirmed April 8, 1812.

men who, but for such wages, would have sailed their own smacks to the Grand Banks, or been engaged in the coasting trade on their own account, or would have followed some money-getting occupation on land. Shrewd, intelligent, self-respecting, independent, accustomed to think for themselves, they formed a body of men the English navy could not match. Patriotism, not a press gang, brought them to the decks of the national ships, and, once there, they submitted cheerfully to a discipline and acquired a skill in the use of the guns which is simply astonishing.

The number of officers on the navy rolls in 1812 was precisely five hundred. The number of seamen, ordinary seamen, and boys in the service was five thousand two hundred and thirty. The marine corps numbered fifteen hundred and twenty-three. Of the seamen, three thousand * were assigned to duty in forts, on the gun-boats, on the lakes, or in the six navy yards.† The rest were on the sixteen frigates, corvettes, brigs, and sloops which, with one hundred and sixty-five gun-boats, made the navy of the United States.‡

Toward feeding, clothing, arming, and paying the troops

* More exactly, 2,884.

† Portsmouth, New Hampshire; Charlestown, Massachusetts; New York, Philadelphia, Washington, Gosport.

‡ Disregarding the condemned hulks New York and Boston and the John Adams, the navy consisted of the following ships:

Guns.	Name.	Built at.	When built.	Tonnage.	Cost.
44	United States	Philadelphia	1797	1,576	$299,336
44	Constitution	Boston	1797	1,576	302,718
44	President	New York	1800	1,576	220,910
38	Constellation	Baltimore	1797	1,265	314,212
38	Congress	Portsmouth	1799	1,268	197,246
38	Chesapeake	Norfolk	1799	1,244	220,677
32	Essex	Salem	1799	860	139,362
28	Adams	New York	1799	560	76,622
18	Hornet	Baltimore	1805	480	52,603
18	Wasp	Washington	1806	450	40,000
16	Argus	Boston	1803	298	37,428
16	Syren	Philadelphia	1803	250	32,521
14	Nautilus	Baltimore	1803	185	18,763
14	Vixen	Baltimore	1803	185	20,872
12	Enterprise	Baltimore	1799	165	16,240
12	Viper	Purchased	1810	148	.....

and sailors Congress had done nothing, or next to nothing, when war began. But the declaration once made, the business of providing means to carry on war was taken up in earnest. With a presidential election near at hand, the Republicans were loath to restore that system of taxation they had swept away ten years before, and in the destruction of which they had so long and so loudly gloried. Gallatin was therefore appealed to. Could he not, he was asked, devise some way of so modifying the Non-importation Law that it would yield as much revenue as could be raised by the proposed internal taxes, tonnage duty, and diminution of the drawbacks? He suggested suspending it for a few months, and doubling the duties on imports. The Committee on Ways and Means gladly seized the idea, and reported bills to that effect. A great struggle followed. If the Non-importation Act were suspended at that moment the system of commercial restrictions, for which Jefferson and Madison had so long contended, was abandoned, a favorite principle of the old Republicans was condemned, and condemned by their younger followers. For this the party was hardly ready, and though Calhoun supported the bill in a splendid speech, though the Federalists lent all the aid they could, the old Republicans won, and by three votes carried a motion to suspend the bill indefinitely. Defeat by so small a vote served but to encourage the Federalists, who returned to the attack; moved to appoint a committee to report a bill repealing the act, and divided the House equally. It was now for Clay to give the casting vote, which he did in the negative. On the following day bills to lay war taxes were postponed till Congress met again. To supply the money which must be had, customs duties were doubled, and five millions of treasury notes were ordered to be issued. On July sixth Congress adjourned.

Never before had a Congress sat so long or done so much. Republicans hailed it accordingly as "the immortal twelfth." But Federalists, when they recalled the Henry letters and the declaration of war, could find no terms strong enough to express their condemnation.

"Read," they would say, "read the manifesto carefully. And when you have read it go and ask the merchant, the in-

surer, the sailor, the ship-owner if one of the unqualified assertions is true. And when they tell you, as they surely will tell you, No, then ask yourself if such a mass of falsehoods warrants a naked declaration of war. You are told that the voice of the people is for war. But the present maladministrators of affairs will find before the year ends that they have sadly mistaken the voice of the people. That voice is not for war. It is loud for peace. The shouts which they hear is the clamor of empty heads, of unsound hearts, of office-holders, levellers, bawling for place. The war hawks tell you that the war is one for the redress of grievances. It is nothing of the kind. It is waged in the hope of conquering Canada, of forever ruining the growing commerce of New England, of helping Napoleon in his attempt to break in pieces the empire of Great Britain. You are basely sold to the tyrant of France. You are bound and covenanted to aid him in all his wicked schemes. Were this the worst, we might, perhaps, endure it. We might, perhaps, bring ourselves to behold with remorse and shame the spectacle of the republic of the New World united in close union with the destroyer of the republics of the Old World. But this is not the worst, for to humiliation must soon be added ruin. Our enemy is the greatest maritime power that has ever been on earth, and to her we offer the most tempting prizes. Our merchantmen are on every sea. Our rich cities lie along the Atlantic seaboard close to the water's edge. And to defend these from the cruisers of Great Britain we are to have an army of raw recruits yet to be raised and a navy of gunboats now stranded on the beaches and frigates that have long been rotting in the slime of the Potomac."

In New England the news was received in many places with public manifestations of grief. Bells were tolled, shops were shut, business was suspended, and in some of the seaports flags on the embargoed shipping were put at half-mast. Expecting a violent outburst of wrath, the Massachusetts Senate endeavored to rouse Republicans by a strong address in favor of war.

The people were reminded how, in a time of profound peace, when no disputes over territory aroused her avarice, when no army and no navy awakened her jealousy, when every

merchant seemed intent on feeding her subjects and filling her coffers till they overflowed, Great Britain had wantonly heaped untold injuries on the citizens of the United States. How our merchants were hunted from the seas; how their property was taken; how their ships were boarded; how their seamen were dragged into bondage of the most cruel kind. How, eager for peace, the people of America had sought it with every sacrifice. How they had borne without murmuring injuries that were slight and had remonstrated only against those that were great; how they forbore till forbearance became shameful and then quit the ocean in the hope that a spirit of moderation would follow the spirit of violence and rapine. How they were chased to their very shores of their country and outrages done them in the waters of their harbors and bays. How spies were sent into their cities to plot with the malcontents for the overthrow of the Government. How the savages were incited to take up the tomahawk and fall upon the frontier towns. How, driven to it, the constituted authorities of the United States had at last declared war for the protection of commerce, for the defence of the citizens, for the preservation of our republican form of government.

The enemies of the republic, the people were assured, had seized on this crisis as a fitting time for attempting to tear the Union apart. This was made plain by declarations from responsible sources; by intrigues held with an authorized British spy; by a settled determination to hinder the Government in waging the war forced upon it. But this opposition, it was insisted, must now stop. The duty of every man was to give a warm support to Government, rally under committees of public safety in every town, district, and plantation, and, if need be, join the militia and be ready to march at a moment's notice to the sea.

The people, however, were determined to give no such support. All over Massachusetts town-meeting after town-meeting was held to denounce the war. The men of Salem had framed a petition to Congress begging that war might not be declared, and were on the point of sending it off when they heard that the evil they so much dreaded had actually come. They now threw aside the petition and sent a strong remon-

strance to the General Court. Well they might be alarmed, for eight hundred of their townsmen were on the sea. Newbury described the war as brought on the country by French intrigue and as offering no reasonable hope of success. Newburyport used language stronger still, and pronounced the war ruinous, costly, and mad; the death-blow to liberty, the last struggle of the last republic under the sun. Lancaster was sure the war could bring nothing but an enormous debt, unparalleled taxation, and the giving up of the few maritime rights the country still possessed. Shrewsbury would not only withhold all aid, but would spare no pains to show up and condemn the folly of the measure. From Gloucester, from Sterling, from Longmeadow, came resolutions of a like kind. At Dedham on the fourth of July Jefferson was toasted as Jeroboam, the son of Nebat, who made Israel to walk in sin. Madison was Nadab, the son of Jeroboam, who walked in the way of his father and in his sin. The ministers almost to a man were against the war and suffered no Sabbath to pass by without a sermon on its iniquity. The text of one was, "I am for peace"; another preached on the words, "With good advice make war"; a third strove to answer the call, "Watchman, what of the night?" a fourth labored hard to convince his congregation that "If a kingdom be divided against itself that kingdom cannot stand." When the day set apart for fasting, humiliation, and prayer came, the denunciations of the ministers were stronger than ever, and their sermons, printed as pamphlets, were scattered by thousands over the country.

And now between the great parties, the Republicans intent on a vigorous prosecution of the war and the Federalists determined to give no aid or countenance to the war, there appeared a third party which assumed the name of Friends of Commerce and of Peace. On the fourth of July, while the Federalists of Dedham were toasting Jefferson and Madison as Jeroboam and Nadab, a convention of the Friends of Peace from every county in New Jersey met at Trenton, framed an address, and began the organization of the party. They declared peace to be most necessary, asserted that it could not be secured till the Republicans were driven from power, and called a new convention to meet in August and name electors

of a President and Vice-President on a peace ticket. Two days later the Friends of Peace in Pennsylvania met at Carlisle, drew up a memorial against war and embargoes, and sent a hundred copies through the State for signature. In Virginia a few Federalists of Fauquier County assembled and denounced the war. At Baltimore the expression of such opinion was not tolerated.

There was at that time published at Baltimore a newspaper called the Federal Republican. The editor in chief was Jacob Wagner, who had as his assistant a young man named Alexander C. Hanson. Wagner had served as chief clerk in the State Department from the time of Pickering to the time of Madison, and was a Federalist of the black cockade school. As such he had denounced the administration and the war with a savage bitterness which roused the deadly hatred of the Democrats. Long before the war was declared this conduct had called forth fierce replies in the newspapers, and had led numbers of distinguished characters to say that, if it were continued after war was declared, the Federal Republican should be silenced. The denunciation was continued, and on the evening of June twentieth a well-organized mob destroyed the type, smashed the presses, and pulled down the building in which the Federal Republican was printed. Made bold by success, the mob rose again the next night, scoured the city in search of men whom they hated, sacked another private house, hurried to the docks, stripped two vessels ready for sea, burned the house of a free negro, and were about to fire the African church when they were scattered by a troop of horse.

On the night the mob pulled down the printing-house Hanson was not in Baltimore. But he was quickly informed of the fact by John Howard Payne, known to every English-speaking people as the author of "Home, Sweet Home." He urged Hanson not to be downed by the mob, but to go on with his paper, assert that liberty of the press of which every Republican from Jefferson down to the lowest demagogue had prated so persistently, and, if need be, defend it with arms. After many consultations with their friends, the editors decided to print the Federal Republican at Georgetown, where the press and types would be safe, and issue it from the house

lately occupied by Wagner in Baltimore. Knowing that trouble would follow, the building was at once turned into a small fort. Arms were gathered. Food was laid in. Barricades were made ready for the windows and doors, and a garrison of some twenty friends collected. In command were two old soldiers of revolutionary fame—General James Maccubin Lingan and "Light Horse Harry" Lee. On July twenty-seventh copies of the paper arrived and were distributed. That night the mob rose in force, pelted the house with stones, beat in the door, brought up a cannon, and were about to blow the building to pieces, when the Mayor and the commander of the militia effected a compromise. The garrison were to surrender. The mob were to do no further harm to life or property. The terms were accepted. The prisoners were marched to jail and the house instantly gutted. During the following night the jail was stormed. Eight of the prisoners mingled with the mob and escaped in the darkness. Nine were taken, dragged to the door, where a butcher beat them down with a club and flung their bodies in a pile at the foot of the steps. The crowd now fell on the senseless bodies, beat them with clubs, thrust pen-knives into their cheeks, and poured candle-grease into their eyes, and finally gave them to the jail doctor to make skeletons of. It was then found that Lingan was dead, and Lee a cripple for life. Some of the others were hidden in hay-carts and sent to friends out of town. Others, too badly hurt to be moved, were cared for at the jail hospital.*

Concerning this shameful riot at Baltimore the Republican newspapers had little to say, and that little was generally praise. But the Federal newspapers had much to say. They reminded their readers of the days of the Sedition Law; of the violence with which the Republicans then cried out for free speech and a free press; how it was then declared to be the duty of every patriot to watch the acts of the servants of the people, and

* My account of the conduct of the mob is taken from the affidavits of the survivors of the garrison. True American, August 18, 19, 1812. Report of the Joint Committee of both branches of the City Council to the Mayor of Baltimore. Aurora, August 11, 1812; also, Testimony taken before the Committee of Grievances and Courts of Justice, relative to the late Riots and Mobs in the City of Baltimore.

condemn in unmeasured terms such as were bad; and asked why in the face of such a record Republicans could rejoice in the destruction of a press at Baltimore. They filled their columns with all the details of the riot, they nicknamed Baltimore Mobtown, and foolishly and unjustly laid all the blame on the administration. In Philadelphia an account of the riot was printed as a hand-bill, and, headed by the words "Madison's Mob," was spread over the city. The Republicans retorted with a long list of Federal misdeeds. Who, it was asked, were the men that insulted Congressman Widgery on the exchange at Boston? Who stoned the house of Benjamin Austin in the same town? Who hustled Judge Turner through the streets of Plymouth? Who sank a privateer at Providence, attacked the United States recruiting officers at Litchfield, mobbed a deputy marshal at Milford, burnt a ship in the custody of the United States at New Haven, and cried out for the sinking of all privateers? What was the politics of the newspaper that graced its columns with crow-bars and ploughshares in battle array, and under them put the words: "To tell you the truth, Southern brethren, we do not intend to live another year under the present national administration."

As time went on, the Republicans discovered that something more than a riot had happened. All over the country decent people of both parties were alarmed. The freedom of the press had been attacked. Was this the first step, it was asked, to a state of affairs very much like the reign of terror in France? In New England such feeling found general expression. At a great meeting in Faneuil Hall the people of Boston adopted resolutions strongly condemning mobs and mob violence, expressed the belief that the outrages at Baltimore were of French origin, and the first fruit of the unnatural and dreadful alliance into which the country had entered in fact if not in form.* The members of the Leonidas Fire Society of Newburyport declared that the press should stand or they fall, and that in the late proceedings at Baltimore they beheld another proof of the strange nature of Democratic fire.† The

* August 6, 1812. New England Palladium, August 17. True American, August 11, 1812.

† True American, August 17; Newburyport Herald.

Newburyport Herald collected and published those passages of the various State constitutions in which it is asserted that the liberty of the press must be inviolably preserved. The people of Georgetown expressed the opinion that the action of the mob surpassed in atrocity the cruel murder of the German printer Palm by the despots of France.* By this time the war had opened seriously and disastrously in the far Northwest.

Keeping the nature of the country in view, General Dearborn drew a plan for an offensive campaign, and sent it to the Secretary of War as early as the middle of May. A main army was to move on Montreal by the road that skirted Champlain, while three corps of militia were to hurry into Canada from Sackett's Harbor, from Niagara, and from Detroit. The plan seemed a good one, was approved, and in time the officers were chosen to carry it out. Commander Thomas Macdonough was ordered to Lake Champlain. Captain Isaac Chauncey was given command of the vessels on Lake Ontario. Dearborn was sent to Albany to make ready the expedition against Montreal. Hull had already been chosen to defend Detroit.

Fear of Tecumthe, the hostility of the Indians, the border raids and murders of a year past, had so alarmed the people of Michigan that they called on the Government to defend them. The call was heard, and the Governor of Ohio was asked to detach three regiments of militia and a troop of dragoons and assemble them at Dayton, whence they were to be marched to Detroit. The Fourth Regiment of United States Infantry was next ordered to join the militia at Urbana. Happening just then to be at Washington, Hull was urged to take command. At first he refused, but at last consented, was given the rank of brigadier-general, and on May twenty-fifth joined the troops at Dayton.

The condition of the militia there gathered would have disheartened a general who had not commanded the half-clad, half-fed, half-armed soldiers of the Revolution. Some had scarcely a suit of clothes. Only a few had a blanket apiece. The leather of the cartouch-boxes was rotten from old age;

* True American; August 14, 1812.

the arms were utterly unfit for use; there was no powder save what the men had brought themselves. But Hull was not disheartened and, for the last time in his military career, made a show of energy. Powder was brought from the mills in Kentucky. A few score of blankets were given by the people of Ohio, and when the guns and muskets had been mended by the smiths of Dayton and Cincinnati the little army set out for Detroit.

As the troops pushed slowly across the wilderness, putting up block-houses, building rude bridges over the streams and clumsy roads across the swamps, a letter from Washington made known to Hull that war would soon be declared, and bade him hurry on to Detroit and wait for further orders. The letter reached him on the twenty-sixth of June, when he was still some seventy-five miles from Detroit. Leaving his heavy camp equipage where he was, he marched the army with all the speed he could to the Maumee river, and near the present site of Toledo loaded his hospital stores, his intrenching tools, his personal baggage, nay, even a trunk containing his instructions and his muster-rolls on board of a schooner, sent it up the lake, and pushed on rapidly for Detroit. He had every reason to expect that Eustis would see to it that news of war reach him long before it did the British. But he was mistaken, and twenty-four hours later the schooner was captured as she passed by Fort Malden. The British officers knew of the declaration of war on June thirtieth. Hull, however, knew nothing of it till July second, when he was at Frenchtown on the river Raisin. Three days sufficed to traverse the forty miles that lay between Frenchtown and Detroit, where on the ninth a second letter gave him leave to take the offensive, and, if he felt able, cross the strait and march against Fort Malden. This was just what officers and men had been clamoring for ever since they reached Detroit; and, now that authority had come to do it, Hull gave way. Boats were gathered as quickly as possible, and at dawn on the twelfth he crossed the river and took up his headquarters at Sandwich, a little village on the Canadian side, three miles below Detroit.

Before him lay the province of Upper Canada, stretching along our frontier from Detroit to the Ottawa river, and con-

taining perhaps seventy-five thousand souls. York, or, as we now know it, Toronto, far away on the shores of Lake Ontario, was the capital. Sir George Prevost was Governor-General, and Brigadier-General Isaac Brock military commander. Of all the men in command on either side of the boundary line, Brock was by far the ablest. Nothing which, in such an emergency, could tend to discourage him was wanting. His troops were few and scattered. His people sympathized strongly with the Americans. His Legislature would not give him even a half-hearted support. Yet he overcame all by energy, by decision, by the good use he made of the time wasted by his enemy.

In the presence of such a man but one course was open to Hull, and that was to go with all the speed he could to Fort Malden and carry it by storm, for it defended Amherstburgh and commanded the channel through which all ships must pass on their way from Lake Erie to Detroit. But he sat still at Sandwich, intrenched his camp, and issued a proclamation to the people of Canada. Lewis Cass, who commanded a regiment of militia, wrote it, and for bombast, for idle threatening, for vainglory, it is equalled, and only equalled, by the later proclamations of Porter and Smyth. Deluded by its blustering threats and gracious promises, a few militia deserted at Malden, and a few farmers, three hundred and sixty-seven in all, came to the camp at Sandwich. Deluded in turn by these, Hull waited in hope that more would follow, and this waiting proved his ruin. Brock was all activity. Troops were hurried toward Malden. The Indians were aroused. The fears of the people were allayed by a proclamation replying to that of Hull. The refractory legislators were sent home. Orders were despatched to the commander on the island of St. Joseph to seize the fort at Michilimackinaw, and Brock himself took the field.

Hull meanwhile was feeling the effects of his sloth and of Brock's energy. No more Canadians came to his camp. Every day something happened to make his situation more desperate and himself more faint-hearted. The Indians cut off his communications with Ohio. The British garrison was strengthened; his officers grew insolent; his troops grew unruly.

Michilimackinaw surrendered, and he heard that the victors would soon be down on him from the Northwest. Letters from the officer who commanded the American troops on Niagara river, and from General Porter, who held the post at Black Rock, informed him that boats crowded with English soldiers had crossed Lake Ontario, and that the troops were hurrying on toward Malden. The Wyandots dug up the hatchet, and Hull, fearing for the safety of his base, recrossed the river and fell back to Detroit. There, without the smallest show of resistance, without so much as firing a gun, he surrendered, on the fifteenth of August, 1812. The first reports of the disaster at Detroit were scouted by the Republicans as Federal tricks. One journal plainly called them Federal lies. The Aurora declared they "must be put upon the shelf of imposition." But the post riders soon brought in hand-bills from Albany and Pittsburg so full of details as to leave no doubt. Then the outcry against Hull became savage. The administration, which was alone to blame, gave him up to popular vengeance, and, on charges of treason, of cowardice, of neglect of duty and unofficerlike conduct, he was tried by court-martial. The court convicted him of cowardice and sentenced him to be shot. But Madison most mercifully gave him his life, and, dismissed from the army, he spent the rest of his days in explaining the surrender and seeking to persuade his countrymen that he had been harshly and unjustly used.

He was indeed a harshly used man. Not he, but Madison, Eustis, and Dearborn were to blame. Had the administration carried out the plan of attack, had Canada been vigorously invaded at the same moment from Detroit, from Niagara, from Sackett's Harbor, and from about Champlain, Brock could not have concentrated his forces about Malden and Hull would not have been captured at Detroit. Eustis, it is true, had three times * written to Dearborn, then at Albany collecting troops and supplies for a northern campaign, urging and entreating him to attack from the Niagara frontier. But Dearborn was slow, and August came before he sent a detach-

* Eustis to Dearborn, July 20, July 26, and August 1, 1812. Defence of Dearborn, p. 4.

ment of one thousand men westward, and invited Stephen Van Rensselaer, a Major-General of the New York militia, to take command. Then it was too late; Brock was already in the field and Hull about to flee from Canada. That nothing might be wanting to make the unfortunate general's lot a hard one, an armistice was concluded between Dearborn and Prevost twenty-four hours after Hull reached Detroit.

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